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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058196
Party	Defendant Wanzhu Li
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Date	05/09/2016
Attachments	Notice of Status of Civil Action.pdf(101746 bytes) Exhibit 1.pdf(350852 bytes) Exhibit 2.pdf(1226880 bytes) Exhibit 3.pdf(4974554 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Sis-Joyce International Co., Ltd.,

Petitioner,

v.

WanZhu Li,

Respondent.

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Cancellation No.: 92058196

Mark: RENA BIOTECHNOLOGY

Registration No.: 4245461

NOTICE OF STATUS OF CIVIL ACTION

Pursuant to 37 CFR § 2.117(a) and TBMP § 510.02(a), Respondent WanZhu "Kathryn" Li ("Respondent") hereby responds to the Trademark Trial and Appeal Board's (the "Board") Order of April 19, 2016 and states that the civil action captioned *American Rena International Corp. v. Sis-Joyce International Co., Ltd.,* Civil Action No. 2:2012-cv-06972 (C.D. Cal.) (the "Civil Action"), ongoing between Respondent and Petitioner Sis-Joyce International Co., Ltd. ("Petitioner") and involving Respondent's RENA BIOTECHNOLOGY mark ('Respondent's Mark"), remains pending in the United States District Court for the Central District of California, as more fully discussed below.

On December 14, 2015, the District Court in the Civil Action issued an Order imposing full terminating sanctions (attached hereto as Exhibit 1) against Petitioner for its "bad faith misconduct," which the Court found was "as egregious as anything this court has ever seen or read in any of the cases." (*Id.* at 82.) As the Court explained, Petitioner "fabricated a declaration for a phantom witness, forged a declaration, falsified and fraudulently procured a declaration, filed these false declarations with different federal courts, obstructed the discovery process by filing fraudulently procured complaints with the Northern District of California, lied under oath, and violated the court's preliminary injunction." (*Id.* at 83-84 (witness names removed).) And

Petitioner committed this gross misconduct "for the purpose of establishing and supporting defendants' prior use defense"—i.e., in an attempt to show that Petitioner's purported Arëna mark has priority over Respondent's Mark. (*Id.* at 3, 41.)

The District Court's terminating sanctions order mandates the entry of judgment in favor of Respondent and against Petitioner on all claims brought by Respondent and all counterclaims brought by Petitioner in the Civil Action. This includes Respondent's claims for infringement of its RENA BIOTECHNOLOGY mark, Registration No. 4,245,461—the mark at issue here. (*See* First Amended Complaint at ¶¶ 44-64 (attached hereto as Exhibit 2).) This also includes Respondent's claims for cancellation of Petitioner's purported Arëna mark, Registration No. 4,002,069—the mark pleaded against Respondent here. (*Id.* at ¶¶ 65-69.) And this also includes Petitioner's claims alleging (1) infringement of the purported Arëna mark by Respondent's Mark (*see* Answer and Counterclaims at ¶¶ 30-41 (attached hereto as Exhibit 3)), (2) that Respondent purportedly abandoned its mark (*id.* ¶ 14), and (3) that Respondent purportedly engaged in fraudulent conduct (*id.* ¶¶ 19-24, 75-83), all of which have now all been rejected by the District Court.[1]

Once final, the District Court's judgment will completely preclude Petitioner's attempt to obtain cancellation of Respondent's Mark, which has been deemed valid and infringed by the District Court, in these proceedings before the Board. *See, e.g., Arcadia Grp. Brands Ltd.,* 99 U.S.P.Q.2d 1134, 1136 (T.T.A.B. Jan. 6, 2011) ("[T]he federal court determination of a trademark issue normally has a binding effect in subsequent proceedings before the Board involving the same parties and issue."); *In re Alfred Dunhill Ltd.,* 224 U.S.P.Q.501, 503 (T.T.A.B. 1984) (same); *see*

[1] In addition to mandating the entry of judgment in favor of Respondent and against Petitioner on all claims, the District Court's Order also requires Petitioner to pay Respondent more than $1 million in attorney's fees as a sanction. (Exhibit 1 at 84.)

also J. Thomas McCarthy, 6 McCarthy on Trademarks and Unfair Competition § 32:94 (4th ed. 2009). However, the District Court has not yet entered its final judgment because it is considering the amount of damages to award to Respondent for Petitioner's infringement.

Accordingly, because the Civil Action is ongoing at this time, Respondent respectfully requests that the Board continue its suspension of these proceedings pending the final determination of the Civil Action, at which point the Board should enter judgment in Respondent's favor in the instant cancellation proceeding.

Dated: May 9, 2016

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Attorneys for Respondent WanZhu "Kathryn" Li

CERTIFICATE OF SERVICE

I, Martha Herrera, certify that on May 9, 2016, a copy of Respondent's NOTICE OF STATUS OF CIVIL ACTION in *Sis-Joyce International Co., Ltd. v. WanZhu Li* (No. 92/058,196) was served on counsel by First Class U.S. mail to:

Ali Kamarei
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/s/ Martha Herrera
Martha Herrera

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

AMERICAN RENA INTERNATIONAL CORP., et al., Plaintiffs, v. SIS-JOYCE INTERNATIONAL CO., LTD., et al., Defendants.	Case No. CV 12-6972 FMO (JEMx) **ORDER Re: MOTION FOR TERMINATING SANCTIONS**

Having reviewed and considered all the briefing filed with respect to plaintiffs' Renewed Motion for Full Terminating and Other Sanctions ("Motion," Dkt. No. 195), and the oral argument presented to the court, the court concludes as follows.

BACKGROUND

On August 13, 2012, plaintiffs filed this action against defendants Sis-Joyce International Co. Ltd. ("Sis-Joyce"), Alice "Annie" Lin ("Alice Lin" or "defendant Lin"), Virginia Wu ("Wu"),[1] and Does 1 through 10. On September 11, 2012, plaintiffs named defendant Robert Simone ("Simone") in place of Doe No. 1.

[1] On January 2, 2013, plaintiffs voluntarily dismissed without prejudice Wu from this action. (See Court's Order of January 16, 2013, Dkt. No. 82).

On March 27, 2013, plaintiffs filed a First Amended Complaint ("FAC," Dkt. No. 108) and substituted Christine "Nina" Ko ("Ko") in place of Doe No. 2.[2] The FAC asserts 16 causes of action against Sis-Joyce and Alice Lin (collectively, "defendants") for: (1) federal trademark infringement, 15 U.S.C. § 1114; (2) common law trademark infringement; (3) trademark cancellation, 15 U.S.C. § 1064; (4) unfair competition under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (5) copyright infringement, 17 U.S.C. § 501; (6) violation of the Anticybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d); (7) misappropriation of trade secrets; (8) interference with prospective economic advantage; (9) trade libel; (10) false light; (11) violation of the right of publicity, Cal. Civ. Code § 3344 and common law; (12) violation of California Business & Professions Code §§ 17200, et seq.; (13) common law unfair competition; (14) violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(c) and 1964(c); (15) conspiracy to violate RICO, 18 U.S.C. §§ 1962(d) and 1964(c); and (16) unjust enrichment. (See FAC at ¶¶ 44-148).

On October 15, 2012, the court issued a preliminary injunction enjoining defendants Sis-Joyce, Alice Lin, and Wu from using plaintiffs' protected trademarks and other confusingly similar marks. (See Court's Order of October 15, 2012, Dkt. No. 45, at 18-20). In granting the injunction, the court held that plaintiffs were likely to succeed on their claims for trademark infringement, copyright infringement, trade dress infringement, right of publicity, and intentional interference with prospective economic advantage. (See id. at 9-16). Defendants appealed the preliminary injunction, and the Ninth Circuit affirmed on July 24, 2013. See Am. Rena Int'l Corp. v. Sis-Joyce Int'l. Co., 534 Fed.Appx. 633 (9th Cir. 2013).

In its order granting the preliminary injunction, the court noted the well-known rule that "[o]wnership of a mark is determined by priority of use, rather than date of registration." (Court's Order of October 15, 2012, at 10) (citing Sengoku Works Ltd. v. RMC Int'l, Ltd., 96 F.3d 1217, 1219, as modified, 97 F.3d 1460 (9th Cir. 1996), cert. denied 521 U.S. 1103 (1997)). The court reviewed plaintiffs' claim of first use and determined that "Plaintiffs have been using the RENA and

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[2] The court granted plaintiffs' Motion for Default Judgment Against Robert Simone and Christine "Nina" Ko on February 14, 2014. (See Court's Order of February 14, 2014, Dkt. No. 159).

RENA BIOTECHNOLOGY MARKS since 2006[,]" and were the first to use the "confusingly similar" marks at issue. (See Court's Order of October 15, 2012, at 10). Although the question regarding first use of the subject marks was squarely at issue in plaintiffs' preliminary injunction motion, defendants did not raise a first-use defense in opposing the motion. (See, generally, Defendants Sis-Joyce International Co., Ltd. and Alice Lin's Opposition to Plaintiffs' Motion for Preliminary Injunction ("Opp'n to Prelim. Inj.," Dkt. No. 28)).

On November 30, 2012, approximately six weeks after the preliminary injunction was issued, defendants alleged for the first time that they were the first to use the trademarks. (See Answer and Counterclaims of Defendants Alice Lin and Sis-Joyce International Co. Ltd., Dkt. No. 69, § III at ¶ 10). Specifically, they alleged that defendant Lin "started using the mark Arëna in 1999[,]" or seven years before plaintiffs began to use the Rena mark in June 2006. (Id.; see also Defendants Sis-Joyce International Co. Ltd. and Alice Lin's Amended Answer, Affirmative Defenses, and Counterclaims to Plaintiffs' First Amended Complaint ("Amended Answer & Counterclaims," Dkt. No. 126) at ¶ 11). Defendants' counterclaims include statutory and common law trademark infringement, trademark cancellation, and trademark libel. (See Amended Answer & Counterclaims at ¶¶ 31-42, 50-56 & 61-66).

On May 31, 2013, plaintiffs filed a Motion for Terminating and Other Sanctions Against Defendants. ("Prior Motion," Dkt. No. 131). Approximately three weeks before plaintiffs filed the Prior Motion, Leon E. Jew ("Jew"), counsel for defendants sought to withdraw as counsel. (See Motion to Withdraw as Counsel for Defendants Sis-Joyce International Co. Ltd., and Alice Lin ("Motion to Withdraw," Dkt. No. 127) at 6 & 7). Jew's request to withdraw was in part based on his belief that his "continued employment will result in violation of the Rules of Professional Conduct," and defendants' "continued defiance of the[ir] counsel's legal advice by refusing to follow it." (Declaration of Leon E. Jew in Support of Ex-Parte Application to Withdraw as Counsel for Defendants Sis-Joyce International Co. Ltd. and Alice Lin ("Jew Motion to Withdraw Decl.," Dkt. No. 115) at ¶¶ 8-9). The court granted Jew's motion to withdraw and denied plaintiffs' Prior Motion without prejudice, so that plaintiffs could confer with Sis-Joyce's new counsel if it were to retain such counsel. (See Court's Order of July 29, 2013, Dkt. No. 155, at 4).

Several months later, after a meet and confer with defendants' new counsel – Ali Kamarei, a partner at InHouse Co. Law Firm ("InHouse") – plaintiffs filed the instant Motion. Thereafter, defendants filed their opposition, (see Defendants Sis-Joyce International Co., Ltd. and Alice Lin's Opposition to Plaintiffs' Renewed Motion for Full Terminating and Other Sanctions ("Opp'n," Dkt. No. 209), and plaintiffs filed their reply. (See Reply in Support of Motion for Full Terminating and Other Sanctions ("Reply," Dkt. No. 217)).

Plaintiffs' Motion seeks terminating sanctions against Sis-Joyce and Alice Lin based on their alleged "obstruction of justice, deliberate submission of and reliance upon fabricated evidence to this Court, the United States District Court for the Northern District of California, and the Ninth Circuit Court of Appeals in support of falsified claims and defenses, and the other grounds set forth in" their Motion. (Notice of Motion, Dkt. No. 195, at 3). Specifically, plaintiffs request "terminating sanctions and/or default against Sis-Joyce and [Alice] Lin, including by striking their pleadings, terminating their defenses and counterclaims, and . . . granting default judgment against them on plaintiffs' claims." (Id. at 2). In the alternative, plaintiffs request that the court "grant[] issue, evidentiary, and instructional sanctions" against defendants. (Id.).

Plaintiffs' Motion also requested leave to file an application for an award of attorney's fees and costs pursuant to the court's inherent power as well as under 28 U.S.C. § 1927. (See Motion at 24-25). During the hearing on the Motion, the court noted that "the issue[s] on plaintiffs' Motion are thoroughly briefed[,]" and the parties' "papers are substantial." (Transcript of Proceedings, December 12, 2013, Dkt. No. 250, at 3 & 6). The court explained at the hearing that plaintiffs' request for fees was, in essence, "part of the same Motion[,]" and therefore, rather than grant plaintiffs leave to file a separate motion or application, the court would treat the fees and costs request as part of same motion and rule on "all the requested sanctions together" after receiving supplemental briefing on those issues. (Id. at 5). Accordingly, the court issued an order directing the parties to submit supplemental briefing addressing: "(1) the authority(ies) under which the fees and costs are sought; (2) the amount of fees and costs sought by plaintiffs and the reasonableness of the requested amounts; and (3) whether the fees and costs should be assessed against defendants and/or counsel." (Court's Order of December 13, 2013, Dkt. No.

242).

As part of their supplemental briefing regarding attorney's fees and costs, (see Plaintiffs' Supplemental Memorandum of Points and Authorities in Further Support of Costs and Fees Requested in Renewed Motion for Full Terminating and Other Sanctions ("Suppl. Fees Motion," Dkt. No. 243)), plaintiffs requested that a portion of the fees and costs be assessed, jointly and severally, against defendants as well as InHouse and Ali Kamarei.[3] (See id. at 1-2). Defendants filed an opposition to the supplemental briefing, (see Defendants Sis-Joyce and Alice Lin's Supplemental Memorandum Re: Motion for Terminating Sanctions ("Def'ts First Fees Suppl. Opp'n," Dkt. No. 255)), as well as a "corrected" opposition. (See Corrected Supplemental Memorandum Re: Motion for Terminating Sanctions ("Def'ts Second Fees Suppl. Opp'n," Dkt. No. 263)).

With leave of court, InHouse filed its own brief to address plaintiffs' contentions that the attorney's fees sanctions should also be imposed against InHouse and Ali Kamarei, (see Responding Attorneys' Opposition to Plaintiffs' Brief in Further Support of Costs & Fees Requested in Renewed Motion for Full Terminating and Other Sanctions ("InHouse's Fees Opp'n," Dkt. No. 256)), to which plaintiffs filed a reply. (See Plaintiffs' Reply in Further Support of Request for Fees in Renewed Motion for Full Terminating and Other Sanctions ("Fees Reply," Dkt. No 261)).

Finally, the parties filed supplemental briefs with respect to defendants' compliance with the preliminary injunction. (See Plaintiffs' Supplemental Brief in Further Support of Renewed Motion for Full Terminating and Other Sanctions ("Suppl. Motion," Dkt. No. 236); Defendants' Opposition to Plaintiffs' Supplemental Brief in Further Support of Renewed Motion for Full Terminating and Other Sanctions ("Suppl. Opp'n," Dkt. No. 237); Notice of Additional Violations of Preliminary Injunction by Defendants Sis-Joyce International Co., Ltd. and Alice "Annie" Lin ("Notice re Prelim. Inj.," Dkt. No. 274-2); Defendants' Response to Plaintiff's Ex Parte Application ("Prelim. Inj. Opp'n," Dkt. No. 282); Plaintiffs' Reply in Support of Notice of Additional Violations

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[3] Plaintiffs did not request sanctions against Jew, defendants' former counsel.

of Injunction Order ("Prelim. Inj. Reply," Dkt. No. 283)).

FACTUAL ALLEGATIONS

Wanzhu "Kathryn" Li ("Li") is the owner and founder of American Rena International Corp. ("Rena") and Robert Milliken ("Milliken") is its chief executive officer (collectively, "plaintiffs"). (See FAC at ¶ 17). Rena makes and sells skin care products, such as Activation Energy Serum, Activation Mist, and Activation Energy Elixir. (See id. at ¶ 18). Plaintiffs allege that since June 2006, Rena "has sold its products using its RENA and RENA BIOTECHNOLOGY trademarks." (Id. at ¶ 17). "It obtained registration of its RENA BIOTECHNOLOGY word mark, No. 3,332,867, in 2007 with a first-use-in-commerce date of February 1, 2007." (Id. at ¶ 19). "The stylized RENA BIOTECHNOLOGY mark, used on all Rena products since June 2006[,]" is as follows:

(Id.). Rena's products, images, graphics, and scientific references are found on its website, www.AmericanRena.com. (See FAC at ¶¶ 28 & 36).

Rena is organized as a "multi-tiered sales organization," which enlists "independent sales agents worldwide" to sell its products. (FAC at ¶ 96). Low ranking sales agents report to a smaller number of higher ranking members, who "have control of more sales personnel than persons in lower tiers enjoy." (Id.).

Plaintiffs allege that defendants Alice Lin, Simone, and Ko are former distributors of Rena products. (See FAC at ¶ 22). Defendant Lin is the owner of defendant Sis-Joyce, which also sells skin care products variously referred to as "ARëna." (See id. at ¶¶ 3 & 11). In 2010, Alice Lin registered the "Sis-Joyce" mark and "NEW! ARëna Activation Energy Serum" mark as shown below:

(Id. at ¶¶ 41-42).

Plaintiffs allege that around October or November of 2010, they discovered that Alice Lin was "selling adulterated RENA products by applying counterfeited labels that used Rena's protected trademarks to generic spray bottles, which were then filled with diluted RENA products and sold as genuine." (FAC at ¶ 22). Starting in early 2011, Alice Lin allegedly began working with defendants Simone and Ko "to manufacture and sell so-called 'ARëna' products," including distributing materials to promote infringing products. (Id. at ¶ 26). According to plaintiffs, Alice Lin and the other individual defendants "engaged in a coordinated effort to both directly counterfeit genuine Rena products and also pass their [own] products off as 'new Rena' products." (Id. at ¶ 42). "The infringing products were packaged with the Sis-Joyce logo and labeled 'NEW! ARëna Activation Energy Serum.'" (Id. at ¶ 31). "Further, the packaging used to ship the infringing products bore a stylized Rena mark and included promotional brochures containing variations of plaintiffs' protected RENA and RENA BIOTECHNOLOGY marks." (Id.). Defendants also allegedly sold knock-off "'ARëna Activation Energy Serum' product[s] in a bottle that is identical in size and shape to the distinctive bottle used by [plaintiff] Rena; with a similar color; and with the infringing 'ARëna' name and the same 'Activation Energy Serum' description that appears on the genuine RENA product." (Id. at ¶ 40).

Plaintiffs allege that defendants "aggressively marketed and sold purported 'ARëna Activation Energy Serum' products . . . designed to cause confusion with genuine Rena products." (FAC at ¶ 42). Defendants' efforts at selling counterfeit "ARëna" products allegedly included the creation and operation of fraudulent and infringing websites. (See id. at ¶ 27). Specifically, with Alice Lin's knowledge or constructive knowledge, defendant "Simone registered the www.RenaSkin.com website through an intermediary or using an assumed name, 'Damon Rith,' in an effort to hide his involvement in the site." (Id.). "On August 14, 2012, defendant Simone purchased private, anonymous domain registration services for www.RenaSkin.com, using the e-mail address renausa1@gmail.com." (Id.). Plaintiffs allege that the website was "carefully crafted to cause maximum confusion with plaintiff Rena's genuine products and [its] AmericanRena.com website." (Id. at ¶ 28). "Virtually every page of [the www.RenaSkin.com] site

ha[d] the following header: 'Genuine American Rena Anti-Aging Activation Serum[,]'" (id.), and "[t]he site display[ed] a photograph of Rena's founder, [] Li, and . . . . [of] . . . Milliken[.]" (Id.). The www.RenaSkin.com site copied substantially all the designs, graphics, photographs and text of the AmericanRena.com website, including a letter authored by Milliken. (See id. at ¶¶ 29 & 30).

Simone, with Alice Lin's knowledge or constructive knowledge, registered two other websites – www.ArenaSkin.com and www.American-Rena.com. (See FAC at ¶¶ 32 & 35). These two sites contained many of the same infringing representations, such as "copied graphics and text from [plaintiff] Rena's website." (Id. at ¶ 33; see also id. at ¶¶ 34-36). Also, Alice Lin allegedly "t[ook] measures to directly trade on the goodwill and popularity of Rena's products in advertisements for their own infringing products." (Id. at ¶ 37). "Simone, with the knowledge or constructive knowledge of [Alice Lin], posted YouTube videos that appear to promote genuine RENA products – and display those products, and even Rena's place of business in Los Angeles – but then direct consumers to the bogus RenaSkin.com website that sells defendants' infringing goods." (Id.) (emphasis in original).

Sis-Joyce and Alice Lin allegedly misappropriated the confidential and trade secret identities of Rena's global sales force, purported to be Rena, and poached a substantial portion of Rena's sales force to work with Sis-Joyce to manufacture and sell so-called "ARëna" products. (See FAC at ¶¶ 26 & 99).

Plaintiffs allege that "Rena's sales numbers dramatically reveal the effect of Defendants' unfair competition and fraudulent activities." (FAC at ¶ 43). In 2009, Rena's sales totaled just under $17 million, and in 2010, its sales were approximately $30 million, with revenues exceeding $1 million each month. (See id.). By August 2011, Rena's sales had decreased to approximately $2.2 million, and since then, "its monthly sales have steadily declined, dropping to . . . $271,000 in June of 2012." (Id.).

LEGAL STANDARD

"It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." Chambers v. NASCO, Inc., 501

U.S. 32, 43, 111 S.Ct. 2123, 2132 (1991) (internal quotation and alteration marks omitted). The "courts have inherent power to [enter sanctions] . . . when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." Fjelstad v. Am. Honda Motor Co., Inc., 762 F.2d 1334, 1338 (9th Cir. 1985); see Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 368 (9th Cir.1992) (The "[c]ourts are invested with inherent powers that are 'governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.'") (quoting Chambers, 501 U.S. at 43, 111 S.Ct. at 2132). "This inherent power is not limited by overlapping statutes or rules. The Supreme Court explained 'that the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct.'" Haeger v. Goodyear Tire & Rubber Co., 793 F.3d 1122, 1131-32 (9th Cir. 2015) (quoting Chambers, 501 U.S. at 49, 111 S.Ct. at 2135).

In the exercise of its inherent power, a court "may impose sanctions including, where appropriate, default or dismissal." Thompson v. Hous. Auth. of Los Angeles, 782 F.2d 829, 831 (9th Cir.), cert. denied 479 U.S. 829 (1986); TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 916 (9th Cir. 1987) ("Courts have inherent equitable powers to dismiss actions or enter default judgments[.]"). In deciding whether to impose the "harsh" sanction of either default judgment or dismissal, see Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills, 482 F.3d 1091, 1096 (9th Cir. 2007) ("A terminating sanction, whether default judgment against a defendant or dismissal of a plaintiff's action, is very severe."), the court considers the following factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." Leon v. IDX Sys. Corp., 464 F.3d 951, 958 (9th Cir. 2006) (citing Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F.3d 337, 348 (9th Cir. 1995)).[4] While the district court need not make explicit findings regarding each of the

[4] There is some question as to whether the five-factor test in Anheuser-Busch applies to sanctions granted under the court's inherent powers. "Although this five-factor test is usually used to review the propriety of Rule 37 sanctions, this same test was applied in Anheuser-Busch to

five factors,[5] a finding of "willfulness, fault, or bad faith" is required for dismissal or default judgment to be proper. See Leon, 464 F.3d at 958; Anheuser-Busch, 69 F.3d at 348.

DISCUSSION

I. EVIDENTIARY OBJECTIONS.

The court will first resolve plaintiffs' evidentiary objections to the Declaration of Annie Lin ("Annie Lin Opp'n Decl.," Dkt. No. 209-3) and the Declaration of Alice Lin ("Alice Lin Opp'n Decl.," Dkt. Nos. 209-4 to 209-12) submitted by defendants in support of their opposition.

A. Annie Lin Declaration.

The court overrules the objections to the Annie Lin declaration as to paragraphs 5, 8, 10, 20-21, 30, and 31, and sustains the objections as to paragraphs 7, 11, 12, 15-16, 18-19, 22-23, 25-27, 29, and 32 for the reasons stated in the objections, including the objections based on hearsay and relevance. (See Plaintiffs' Evidentiary Objections to the Declaration of Annie Lin in Support of Defendants' Opposition to Plaintiffs' Motion for Terminating and Other Sanctions ("Evid. Objs. to Annie Lin Opp'n Decl.," Dkt. No. 217-3); Defendants' Opposition to Plaintiffs' Evidentiary Objections to the Declaration of Annie Lin Submitted in Opposition to Plaintiffs' Motion for Terminating Sanctions, Dkt. No. 230). Also, for the reasons stated in plaintiffs' evidentiary objections, including lack of authentication, the court sustains the objections to exhibits one, two

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review sanctions granted under a court's 'inherent power.'" Leon, 464 F.3d at 958 n. 4. However, in Haeger, the court did not apply the five-factor test and instead evaluated whether the party's behavior constituted "bad faith" and whether the district court fashioned appropriate sanctions, i.e., whether the district court abused its discretion in imposing the challenged sanctions. See 793 F.3d at 1132-41. It may be that the reason the Haeger court did not apply the five-factor test is because the sanctionable conduct (e.g., failure to disclose evidence during discovery) was discovered after the case closed and thus many of the five factors were irrelevant. Nevertheless, the court will, out of an abundance of caution, apply the five-factor test set forth in Anheuser-Busch.

[5] Although the five-factor test is frequently referred to as the "'Malone factors,' probably because [the Ninth Circuit's] opinion in [Malone v. U.S. Postal Serv., 833 F.2d 128, 130-34 (9th Cir. 1987), cert. denied 488 U.S. 819 (1988)] provides a comprehensive discussion of them," In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1234 n. 11 (9th Cir. 2006), the court will refer to them as the Anheuser-Busch factors since it was that court that applied the Malone factors to review sanctions granted under a court's inherent powers. See 69 F.3d at 348.

and three, attached to the Annie Lin declaration, (see Evid. Objs. to Annie Lin Opp'n Decl. at 10-12), and accordingly strikes them from the record.

B. Alice Lin Declaration.

The court overrules the objections as to paragraphs 2-8, 14, and 18-20, to the Alice Lin declaration. However, the objections as to paragraphs 9-12, 15, 28, and 29, are sustained for the reasons stated in the objections, including the objections based on hearsay and relevance. (See Plaintiffs' Evidentiary Objections to the Declaration of Alice Lin in Support of Defendants' Opposition to Plaintiffs' Motion for Terminating and Other Sanctions ("Evid. Objs. to Alice Lin Opp'n Decl.," Dkt. No. 217-2); Defendants' Opposition to Plaintiffs' Evidentiary Objections to the Declaration of Alice Lin Submitted in Opposition to Plaintiffs' Motion for Terminating Sanctions ("Resp. to Evid. Objs. to Alice Lin Opp'n Decl.," Dkt. No. 229)).

In addition, paragraph 29 is stricken based on the principles of the sham affidavit rule. "The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." See Yeager v. Bowlin, 693 F.3d 1076, 1080 (9th Cir. 2012), cert. denied 133 S.Ct. 2026 (2013). Here, Alice Lin submitted a declaration that directly contradicts information she gave in previous deposition testimony. (Compare Alice Lin Opp'n Decl. at ¶ 29) ("I did not draft the declarations themselves, do not know how the signatures were obtained, and did not know whether they were falsified.") with (Declaration of Ryan Q. Keech in Support Thereof Plaintiffs' Reply in Support of Renewed Motion for Full Terminating and Other Sanctions ("Keech Reply Decl.," Dkt. No. 217-1), Exh. B ("Alice Lin Oct. 2013, Dep.," Dkt. No. 223-2)) at 280-81 & 286 (explaining how she obtained the declarations and stating that she "called [her] sister up on the phone [and] told her how to write it."). Thus, paragraph 29 is stricken, as the court finds that paragraph 29 is a sham produced merely to attempt to create a disputed issue of fact. See Yeager, 693 F.3d at 1080 ("In order to trigger the sham affidavit rule, the district court must make a factual determination that the contradiction is a sham, and the inconsistency between a party's deposition testimony and subsequent affidavit must be clear and unambiguous to justify striking the affidavit.") (internal quotation marks omitted). Also, based on the reasons stated in plaintiffs' evidentiary objections, including lack of authentication, the court sustains the objections

to exhibits one through six, attached to the Alice Lin declaration, (see Evid. Objs. to Alice Lin Opp'n Decl. at 9-13), and strikes them from the record.

II. MOTION FOR TERMINATING SANCTIONS.

The primary causes of action underlying plaintiffs' suit against defendants are based on trademark infringement. (See FAC at ¶¶ 44-80). It is undisputed that plaintiffs registered the RENA BIOTECHNOLOGY mark with a first-use-in-commerce date of February 1, 2007, (see id. at ¶ 19; Amended Answer & Counterclaims at ¶ 19), before Lin registered the "NEW! ARëna Activation Energy Serum" mark in 2010. (Court's Order of October 15, 2012, at 4). Because "ownership of a mark is determined by priority of use[,]" (id. at 10), defendants' purported priority-of-use defense is critical to this case.

The crux of plaintiffs' Motion is that "Sis-Joyce's claim of seniority, and the evidence that it has proffered to support it, have been fabricated[,]" (Motion at 2), thus warranting terminating sanctions. Specifically, plaintiffs assert that defendants: (1) fabricated and filed three declarations in an attempt to show defendants' first use of the trademarks at issue, (see id. at 6-9 & 11-15); and (2) obstructed justice when defendants fabricated documents in an attempt to prevent one of defendants' witnesses from attending a deposition noticed by plaintiffs – even after a judge from the Northern District of California issued an order holding the witness in contempt. (See id. at 9-15).

A. Litigation Misconduct.

1. **False and Fabricated Declarations**.

Plaintiffs assert that defendants falsified declarations bearing the signatures of Jess Chen ("Chen"), Amy Luong ("Luong"), and Alice Win ("Win"), (see Motion at 7-9 & 11-12), and that defendants committed fraud on the court when they filed those declarations in this court and the Ninth Circuit Court of Appeals, in support of their appeal of the court's preliminary injunction. (See id. at 6-7). Plaintiffs assert that their investigation shows that defendants falsified and/or fraudulently procured the declarations and then filed them with the courts. (See id. at 7-9 & 11-12).

All three declarations[6] are typewritten on non-legal pleading paper, and have only seven to eight lines each, generally consisting of: the name of the declarant, the year in which they allegedly purchased ARëna products, an "under penalty of perjury" declaration, and the date and location of execution, followed by a signature. (See Declaration of Ryan Q. Keech in Support of Plaintiffs' Motion for Terminating Sanctions ("Keech Prior Motion Decl.," Dkt. No. 131-1), at Exh. E ("Alice Win Decl."); Exh. F ("Jess Chen Decl.") & Exh. G ("Amy Luong Decl.")).

Defendants first filed the three declarations on February 20, 2013, as part of their supplemental excerpts of record in the Ninth Circuit Court of Appeals in support of their appeal of the preliminary injunction. See Am. Rena Int'l Corp. v. Sis-Joyce Int'l Co. Ltd., Case No. 12-57169 (9th Cir. 2012) ("Appeal") (Dkt. No. 22) (filing paper copies of the supplemental excerpts of record). Having not raised a first-use defense in opposing plaintiffs' motion for preliminary injunction, (see, generally, Opp'n to Prelim. Inj.), defendants argued on appeal for the first time that "Lin began to use ARëna as her trademark long before Rena was incepted." Appeal (Appellants' Opening Brief, Dkt. No. 7, at 12). Defendants affirmatively represented to the Ninth Circuit that the Chen, Luong, and Win declarations are "from ARëna users and salon owners in California who state that they used ARëna as far back as 2000, 2002, and 2003." Id. (Appellants' Reply Br., Dkt. No. 21, at 9).

Plaintiffs assert, and defendants do not deny, that defendants agreed to withdraw the declarations from the Ninth Circuit only after plaintiffs "threatened motion practice" regarding the improperly filed declarations in defendants' supplemental excerpts of record ("ASER"). (See Keech Prior Motion Decl. at ¶ 7 & Exh. I; Motion at 6 n. 2; see, generally, Opp'n.). On February 22, 2013, defendants filed a motion to file a substitute or corrected reply brief and supplemental

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[6] Because defendants nowhere argue or provide evidence challenging the authenticity of plaintiffs' evidence, particularly the falsified evidence at issue (i.e., the Chen, Luong, and Win declarations, and the Luong letters), (see, generally, Opp'n.), the court finds that an evidentiary hearing is not necessary. See Prof'l Seminar Consultants, Inc. v. Sino Am. Tech. Exch. Council, Inc., 727 F.2d 1470, 1472-73 (9th Cir. 1984) (no abuse of discretion in ordering sanctions without an evidentiary hearing where district court ruled such a hearing was unnecessary; party did not contest the authenticity of falsified evidence, and district court made findings of fact on the record when ordering sanctions).

excerpts of record, in which they stated that defendants' "counsel inadvertently included . . . new evidence to the [ASER], and now request that the new evidence be removed from the ASER." Appeal (Motion to File Substitute or Corrected Reply Brief and Supplemental Excerpts of Record, Dkt. No. 24-1, at ¶ 5). Specifically, defendants sought, and were granted leave to remove evidence of and references to "Jess Chen's Declaration (02/17/13)[;] Amy Luong's Declaration (02/15/13)[; . . . and] Alice Win's Declaration (11/19/12)." (Id. at ¶ 6).

Defendants also filed the three declarations in multiple filings in this court. For example, in their opposition to plaintiffs' motion to dismiss defendants' counterclaims, defendants relied on the three declarations to support their argument that "Lin had been using the common law mark ARëna before Rena's inception." (Defendants' Memorandum in Opposition to Motion to Dismiss Counterclaims ("Opp'n to Motion to Dismiss Counterclaims," Dkt. No. 97) at 9; see Declaration of Steven Tran in Support of Defendants' Opposition to Plaintiffs' Motion to Dismiss Counterclaims, Dkt. No. 97-1 at Exh. 1 (Amy Luong Decl., Dkt. No. 97-2), Exh. 2 (Jess Chen Decl., Dkt. No. 97-3) & Exh. 3 at 14 (Alice Win Decl., Dkt. No. 98-1)).

Defendants also relied on the Luong, Chen, and Win declarations to assert an affirmative defense of justification and privilege. (See Amended Answer & Counterclaims at p. 36). Defendants asserted that they "were justified and privileged. . . when they established prior use dating back to the years 1999 and 2000." (Id.) (citing Amy Luong Decl. and Jess Chen Decl.).

Defendants also opposed plaintiffs' ex parte application to depose Amy Luong by contending that "Ms. Luong has stated in her declaration (Exhibit D) and in her letters to the Court that she simply purchased my product and had nothing further to add." (Defendant Alice Lin's Opposition to Plaintiffs' Ex Parte Application for Leave to Take the Deposition of Amy Huynh Luong After the Discovery Cut-Off ("Opp'n to Taking Luong's Deposition," Dkt. No. 168), at 4 & Exh. D). Defendant Lin, in support of defendants' argument that the court should not permit plaintiffs to depose Luong after the discovery deadline, attached and repeated the false allegations contained in the Luong declaration and two letters that defendants had Luong sign that claimed that plaintiffs' counsel threatened and harassed Luong. (See id. at ¶¶ 2-4 & Exhs. B, C & D); see infra at §§ II.A.1.c & II.A.2.

Although defendants claim that they have no intention to rely on the declarations any further in this court, (see Opp'n at 18), they have never formally withdrawn the declarations as they did before the Ninth Circuit.

a. *Declaration of Alice Win*.

The declaration of Alice Win states the following: (1) "I am a resident of Union City, California;" (2) "I am the owner of City Salon in Union City, California. I have owned City Salon since it opened in the year 2000;" and (3) "I purchased ARëna products from Sis-Joyce in . . . 2000." (Alice Win Decl.). The declaration indicates that it was executed on November 19, 2012, in San Jose, California, and bears a signature over the typed signature line. (See id.).

Plaintiffs retained the services of a private investigator, whose investigation determined that "there is no person named 'Alice Win' who lives in or around Union City, California, and no person who has recently lived in or around Union City, California, who goes by that name." (Declaration of Chris Reynolds in Support of Plaintiffs' Motion for Terminating Sanctions ("Reynolds Decl.," Dkt. No. 131-2) at ¶ 9). The investigator also determined that "there is no 'Alice Win' who has been associated in any way with 'City Salon' in Union City, California." (Id. at ¶ 10). According to the investigator, county records indicate that the only "City Salon" in Alameda County, where Union City is located, is owned by a man named Phong Le, and was previously owned by Quan Van Hoang and Thuong Thi Hoang. (See id. at ¶ 11). Moreover, "[n]o person named 'Alice Win' is licensed by the California State Board of Barbering and Cosmetology, which one would require to operate a business" like City Salon. (Id. at ¶ 10).

After producing the Alice Win declaration, defendants took great efforts to prevent plaintiffs from contacting, locating or otherwise conducting discovery as to Alice Win. For example, defendant Lin asserted in her declaration: "I will not [find Alice Win] for Quinn. We are not required to construct their case. I will not provide Alice Win's privileged third party private and confidential information." (Declaration of Alice Lin in Support of Defendants' Opposition to Plaintiffs' Notice of Motion and Motion for Terminating and Other Sanctions ("Alice Lin Prior Opp'n Decl.," Dkt. No. 140-2) at ¶ 6). At a telephonic meet and confer, defendants' former counsel echoed his clients' statements that defendants "refuse[] to release the detailed contact

information" for Alice Win and "do[] not want to release the contact information for Alice Win."[7] (Keech Prior Motion Decl., Exh. B at 7 & 8) (transcript of May 13, 2013, telephonic meet and confer). Further, although the Win declaration is dated November 19, 2012, defendant Lin testified approximately two months later that she could not identify "anyone who could verify" defendants' prior use defense. (Keech Reply Decl., Exh. A ("Alice Lin Jan. 2013 Dep.") at 115) (Q. "Can you give me the name of anyone who could verify that the beauty liquid was sold under the ARëna brand either at the store or at swap meets before 2010?" A. "I cannot think of any name at this point. But do not worry, because I will provide such information to the Court at a later date.").

In their Opposition, defendants make several arguments in an attempt to explain the Alice Win declaration. First, defendants claim that on October 14, 2013, Alice Lin received a call from Alice Win, who was in Beijing and could be contacted at the phone number 011 86 13521325272. (See Opp'n at 8; Def'ts Second Fees Suppl. Opp'n at 7). Counsel for defendants go so far as to claim that they "employed an independent English Chinese Translator Interpreter," dialed the phone number and spoke with Alice Win for 22 minutes, who confirmed that "she signed the declaration," "had been a resident of Union City and the owner of City Salon," and "did use ARëna products and did provide them to other people in the year 2000." (See Def'ts Second Fees Suppl. Opp'n at 8).

Defendants' claim strains credulity. Defendants first provided the phone number to plaintiffs and this court in their Opposition, giving plaintiffs no opportunity to verify whether the phone number belongs to the same Alice Win that purportedly submitted the Alice Win declaration. Defendants never explain why they did not provide plaintiffs with Alice Win's phone number prior to the filing of the instant Opposition or why they made no attempt to contact Alice Win when they filed their opposition to the Prior Motion. (See, generally, Opp'n). Also, given the content of "Alice

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[7] Of course, defendant Lin misunderstands her obligations under the Federal Rules of Civil Procedure. Defendant Lin was obligated to provide the contact information for Alice Win. See Fed. R. Civ. P. 26(a)(1) ("a party must, without awaiting a discovery request, provide to the other parties: (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment").

Win's" 22-minute conversation – namely, her affirmation of the veracity of the contents of the Win declaration – and the fact that defendants believed it was necessary to retain an interpreter for the phone call, defendants never explain why they did not submit another declaration from Alice Win. (See, generally, Opp'n & Alice Win Decl.). In any event, defendants' willingness to submit an inadmissable hearsay declaration from their interpreter, see infra at § III. (striking statements by Howard Huang), rather than submit another (potentially fraudulent) declaration from Alice Win suggests that this may be yet another attempt by defendants to save their first-use affirmative defense.

If, based on defendants' phone call with Alice Win, the Alice Win declaration at issue was valid and accurate, then defendants would not need to distance themselves from the declaration – essentially conceding that the Win declaration is fraudulent – by contending that they never "authorized or instructed anyone acting under their authority or on their behalf to fabricate information or to obtain false signatures on declarations." (Opp'n at 2 & 24; see Alice Lin Opp'n Decl. at ¶ 5). If defendants never authorized or instructed anyone to obtain false signatures or declarations, then why did defendants file declarations with the court they never authorized? Surely, even a "simple person [such as Alice Lin] who has a very limited ability to speak and understand English," (Opp'n at 1), knows that submitting false evidence to a court is wrong.

Finally, somewhat contradictorily, defendants attempt to shift responsibility for obtaining the Alice Win declaration onto Annie Lin, who is claimed to be defendant Alice Lin's sister[8] and a Sis-

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[8] Defendants contend that plaintiffs have fraudulently asserted that Alice Lin and Annie Lin are one and the same. (Def'ts Second Fees Suppl. Opp'n at 10 n. 2 (claiming plaintiffs "cannot ethically perpetuate a fraud upon the Court by pretending that a person, a witness, does not exist."). Defendants' contention is utterly meritless. The original Complaint named Alice "Annie" Lin as a defendant. (See Complaint, Dkt. No. 1). In the court's preliminary injunction order, the court noted that Alice Lin "denie[d] that she has ever used the name 'Annie,'" despite the fact that Annie and Alice Lin "share the same phone number," and "the same addresses." (Court's Order of October 15, 2012, at 5). Alice Lin did not clarify in her opposition to the motion for preliminary injunction that Annie Lin was her sister and/or a Sis-Joyce employee. (See, generally, Opp'n to Prelim. Inj.). Also, at her January 11, 2013 deposition, when asked about a Fremont, California address that Alice and Annie may have shared, Alice Lin testified that she owned a residential rental property in Fremont that had "at least seven" renters, but was not sure if any of the renters were named "Annie Lin." (See Alice Lin Jan. 2013 Dep. at 18-19). Again, Alice Lin did not clarify

Joyce employee. (See Alice Lin Oct. 2013, Dep. at 187-89 (Alice Lin testifying Annie Lin is her sister) & 237-38 (Lin testifying that Annie Lin works for Sis-Joyce as a part-time employee). Specifically, defendants assert that "[they] did not draft the declarations themselves[,]" and that "Annie prepared and obtained the declarations . . . and provided them to Alice and Sis-Joyce." (Opp'n at 22). Defendants' assertions are plainly meritless and contradict their prior statements.

Much of Annie Lin's declaration was stricken, especially as it relates to any statements made to her by the alleged Alice Win. See supra at § I. Further, even assuming the court considered the stricken portions of Annie Lin's declaration, the result would not change.[9] Alice Lin admits that Annie Lin is an agent of Sis-Joyce, (see Alice Lin Oct. 2013, Dep. at 237-38), and has not been terminated or reprimanded for any conduct as a Sis-Joyce employee. (See id. at 238) (Q. "Have you ever fired or terminated the employment of your sister with Sis-Joyce?" A. "No." Q. "Have you ever reprimanded your sister for anything that she's done while working for Sis-Joyce?" A. "No."). Thus, even assuming that Annie Lin was solely responsible for the alleged misconduct – which she is not – the evidence is clear that she committed the acts that are the subject of the Motion as an agent of defendants. See Holley v. Crank, 400 F.3d 667, 673 (9th Cir.

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that Annie was her sister or a Sis-Joyce employee.

It was only at her October 30, 2013, deposition that Alice Lin testified that she had a sister named Annie Lin, whose Taiwanese name is Ah Yu and Chinese name is Szuyu. (See Alice Lin Oct. 2013 Dep. at 187-188). Although Alice Lin claims that she refers to Annie by her Taiwanese name, Alice Lin also admitted that she has known that her sister had used the English name "Annie" for more than ten years. (See id. at 189) (Q. "Was it more than ten years ago that your sister went by the name Annie?" A. "Yes."). In short, defendants knew there was confusion on the part of plaintiffs as to whether Alice Lin and Annie Lin were the same person and did nothing to clarify the matter.

[9] The portion of Annie Lin's declaration that is admissible adds little, if anything, to the discussion. For example, Annie Lin attests that she met Alice Win in 1999 at an adult language school, (see Annie Lin Opp'n Decl. at ¶ 20), and "[i]n 2002 . . . [they] attended Fremont Beauty College" together. (Id. at ¶ 4). According to Annie Lin, "[i]n or around November 2012, [she] called Ms. Win and asked her whether she remembered ever using or purchasing [her] sister's ARëna products." (Id. at ¶ 21). Annie Lin states that she "prepared Ms. Win's declaration in Chinese and translated the declaration into English with a computer program." (Id. at ¶ 24). However, conspicuously missing is any indication of when and how the signature on the Win declaration was obtained. (See, generally, Opp'n; Annie Lin Opp'n Decl.; Alice Lin Opp'n Decl.).

2004) ("Principals are liable for the torts of their agents committed within the scope of their agency.").

In any event, the uncontradicted evidence indicates that defendant Lin is responsible for creating the fabricated Win declaration. When asked about all three declarations at her deposition, including the Win declaration, Alice Lin testified: "I wrote them down in Chinese. And then essentially my sister translated them through Google or some sort of Hong Kong translation software. And then after they were translated, then my sister [Annie] typed them up." (Alice Lin Oct. 2013 Dep. at 281). When asked by plaintiffs' counsel, "Ms. Lin, is it true that in conjunction with your sister, you wrote these three declarations that are marked as Exhibits 68 [Win declaration], 69 [Chen declaration], and 70 [Luong declaration]?" (see id. at 284), Alice Lin responded in the affirmative. She testified, "Yes. My sister typed these documents up and went to get their signatures." (Id.) (emphasis added). When Alice Lin was asked whether it was true that "[she] originally wrote these [declarations] in Chinese[,]" Alice Lin responded: "I called my sister up on the phone, [and] I told her how to write it. So my sister wrote it in Chinese, then later on it was translated into English." (Id. at 286) (emphasis added). Thus, Alice Lin's own testimony proves that she instructed her employee, Annie Lin, how to draft the Win declaration, and Alice Lin and/or Annie Lin wrote it in Chinese, before Annie Lin translated it into English.

In short, the court finds that the evidence is clear and convincing that the fraudulent Win declaration was created personally and/or at the direction of, defendant Lin and that the declaration was filed both in this court and the Ninth Circuit with the intent that the courts rely on the false declaration. Further, defendants' refusal to provide plaintiffs with any contact information for Win, their own witness, constitutes a violation of their discovery obligations and also supports the conclusion that defendants attempted to conceal the fraudulent nature of the Win declaration.

b. *Declaration of Jess Chen*.

The declaration of Jess Chen states the following: (1) "I am a resident of Fremont, California;" (2) "I am the owner of Little Scissors Salon in Fremont, California. I have owned Little Scissors Salon since it opened in 2003;" and (3) "I purchased ARëna products from Sis-Joyce in the year 2003." (Chen Decl.). The declaration indicates that it was executed on February 17,

2013, in Fremont, California, and bears a signature over the typed signature line. (See id.).

After serving a subpoena for "Ping Xu, AKA Jess Chen[,]" plaintiffs took the deposition of Ping Xu ("Xu") on May 1, 2013. (See Keech Prior Motion Decl. at Exh. J ("Xu Dep.")). Xu testified that her full name is Ping Xu, and she sometimes uses the name Jessie. (See id. at 5). Xu also clarified that her husband's last name is Chen. (See id. at 27) (Q. "[Y]our familiar name with clients and whatnot is Jessie. Right?" A. "Jessie, yeah." Q. "And you don't go by the last name Chen. Correct?" A. "No." Q. "But your husband does go by the last name Chen?" A. "Yeah."). Xu testified that although she and her husband co-own Little Scissors Salon, (see id. at 11), she does not go by "Jessie Chen," or "Jess Chen," but rather "Jessie Xu." (See id. at 12) (Q. "And so you go by Jessie?" A. "Yeah, Jessie. If I sign, I will sign Jessie Xu. I never sign Jessie Chen."); (see also id. at 25) (Q. "But you also go by Jessie. Right?" A. "Jessie, but Jessie – never Jessie Chen."). Xu further testified that, while she is the owner of Little Scissors Salon, it is a children's hair salon and has been a children's hair salon since it opened in 2003, (see id. at 10), and as such, Xu and Little Scissors Salon do not sell any skin care products such as those sold by the parties. (See id. at 23) ("I don't have this product. This product is for facial something? I have no idea what kind of product, because I don't do the facial anything in the shop.").

After being presented with the Chen declaration, Xu responded that she had never before seen the declaration and that she did not sign it. (See Xu Dep. at 16-19) (Q. "You never signed this document, did you?" A. "No, I never saw that." Q. "And you've never seen this document before you received the subpoena in this case. Correct?" A. "Yeah, I never see this before." Q. "Is that your signature?" A. "No. It's totally no, not my signature"). As to the assertion in the Chen declaration stating that Chen "purchased ARëna products from Sis-Joyce in the year 2003[,]" (Chen Decl.), Xu testified that she "never purchased anything from Sis-Joyce[,]" (Xu Dep. at 20), and had never purchased or even seen any product called ARëna or Rena. (See Xu Dep. at 21-23 & 26). During her deposition, Xu repeatedly denied ever signing the Chen declaration. (See id. at 21-22). She further testified that she has never met a person named Alice Lin, (see id. at 22-23), and that the Chen declaration is "totally fake." (See id. at 24) (Q. "And so this document, Exhibit 43, which purports to be a document that you have signed 2 months ago under penalty of

perjury, is a fake document?" A. "Yes, fake. It's totally fake. I – not my signature. Okay?").

Defendants do not deny the Chen declaration is false or otherwise present any admissible evidence that it is not. (See, generally, Opp'n.). Instead, they assert that "[n]either Alice nor Annie have ever met Ms. Chen[,]" (Opp'n at 8; see Alice Lin Opp'n Decl. at ¶ 16; Annie Lin Opp'n Decl. at ¶ 28), and that the non-existent "Alice Win" was responsible for obtaining the Chen declaration. (See Opp'n at 8; Annie Lin Opp'n Decl. at ¶ 31 ("I gave Ms. Win the document to be signed by Ms. Chen, and received a signed version back shortly thereafter.")). Again, defendants assert that they did not authorize or instruct anyone acting under their authority or on their behalf to fabricate information or to obtain false signatures on the declarations. (See Opp'n at 8). Defendants further state that they were not present when Xu's signature was obtained. (See id.).

Defendants' assertions beg the question as to why they would submit declarations that they allegedly neither authorized nor witnessed. Further, their belated and incredulous assertions are belied by the evidence that defendant Lin along with Annie Lin personally helped draft and/or prepare the Chen declaration. See supra at § II.A.1.b. Indeed, defendants' own evidence indicates that "per Alice's instructions," "[Annie Lin] prepared Ms. Chen's declaration in Chinese and translated it into English with a computer program." (Annie Lin Opp'n Decl. at ¶ 30) (emphasis added). Finally, even assuming "Alice Win" does exist – which she does not – and that she was responsible for obtaining the declaration, she would have been acting on behalf of defendants, just as Annie Lin did, in procuring evidence to aid in their defense. See, e.g., Am. Soc'y of Mechanical Eng'rs, Inc. v. Hydroleval Corp., 456 U.S. 556, 565-66, 102 S.Ct. 1935, 1942 (1982) ("[U]nder general rules of agency law, principals are liable when their agents act with apparent authority and commit torts").

In short, the court finds that the evidence is clear and convincing that the fraudulent Chen declaration was created personally and/or at the direction of, defendant Lin and that the declaration was filed both in this court and the Ninth Circuit with the intent that the courts rely on the false declaration.

c. *Declaration of Amy Luong*.

The declaration of Amy Luong states the following: (1) "I am a resident of San Jose, California;" (2) "I purchased ARëna products from Sis-Joyce in the year 2002 for personal use[;]" and (3) "I was completely satisfied with the product." (Luong Decl.). The declaration indicates that it was executed on February 15, 2013, in San Jose, California, and bears a signature over the typed signature line. (See id.).

After being held in contempt by a judge from the Northern District of California for refusing to appear for her deposition for five months, see infra at § II.A.2, Luong finally appeared for her deposition on September 5, 2013. Luong appeared with her own counsel, and provided testimony in Cantonese, her primary language, through an interpreter. (See Declaration of Ryan Q. Keech ("Keech Motion Decl.," Dkt. No. 195-1) at Exh. B ("Luong Dep.")).

Luong testified that she met Annie Lin in 2002 in cosmetology school. (See Luong Dep. at 11). After plaintiffs' counsel showed Luong her declaration of February 15, 2013, she affirmed that she personally signed the declaration after Annie Lin provided it to her. (See id. at 12). According to Luong, Annie Lin requested that they meet at the parking lot of an Asian grocery store in San Jose, California. (See id. at 13-14). When they met, Annie Lin presented the declaration to her, (see id.), which they discussed in Mandarin, although Luong's primary dialect is Cantonese. (See id. at 7 (Q. "And what is your native language?" A. "Cantonese.") & 16 (Q. "When you were speaking to Annie Lin, in what language were you speaking?" A. "A little bit Mandarin. Basically my Mandarin is not that good." Q. "Does Amy [sic] Lin, to your knowledge, speak Cantonese?" A. "She does not speak Cantonese.")). Luong testified: "We were standing in the parking lot of Lion's market, and I asked her why did I have to sign this document. She told me not to worry about anything. This was just something related to advertising online, and I could just sign it." (Id. at 15; see also id. at 21 (same)).

Although Luong could not read or understand the declaration because it was in English, she signed the document because "[she] was only thinking of helping out a friend." (Luong Dep. at 15) (Q. "And when you were handed the document you were unable to read it and understand it because you don't read English. Is that right?" A. "That's right. And I was only thinking of helping

out a friend."). Luong did not know what the declaration said when she signed it, (see id. at 16), does not know anything about Sis-Joyce, (see id. at 17), and had never before heard of Sis-Joyce or a product called ARëna prior to her involvement with the lawsuit. (See id. at 18). Luong testified that, contrary to the assertions in her declaration, she never purchased ARëna products. (See id. at 21) (Q. "And, ma'am, what is not true is the statement 'I purchased ARëna products from Sis-Joyce in the year 2002 for personal use.' Correct?" A. "Correct.").

As an initial matter, defendants do not dispute or otherwise provide any admissible evidence to counter Luong's own account of how she was tricked into signing the false declaration. (See, generally, Opp'n). Indeed, Annie Lin's declaration confirms Luong's account of events. Annie Lin states that "[i]n or around February 2013, [she] called Ms. Luong and asked her whether or not she remembered having used or purchased [her] sister's products," (Annie Lin Opp'n Decl. at ¶ 10), but admits that she did not discuss her sister's products as bearing an ARëna or Rena mark. (See id. at ¶ 15). Annie Lin declares that she "prepared Ms. Luong's declaration in Chinese and translated the declaration into English using a computer program." (Id. at ¶ 13). She "thereafter . . . met with Ms. Luong to give her the document." (Id. at ¶ 14). Annie Lin admits that she did not tell Luong that the document would be submitted to the court or the name of the disputed products when she requested that Luong sign the declaration. (See id. at ¶ 15) ("I did not realize that I should tell Ms. Luong that the document would be submitted to the court, or that I should remind her of the name of the products."). Annie Lin's declaration does not dispute that she misrepresented the document as being needed for online advertising purposes and that she failed to mention that it was going to be used as part of a lawsuit. (See, generally, id.).

In an effort to justify their conduct with respect to the Luong declaration, defendants rely on the purported "language barrier" between Luong and Annie Lin. (See Annie Lin Opp'n Decl. at ¶ 17) ("My native language is the Chinese dialect known as Mandarin."). Defendants also claim that Annie Lin lacked "knowledge and was never informed of the proper procedural method or

requisite due diligence required when obtaining a declaration for a court proceeding."[10] (Id. at ¶ 16). Defendants' assertions are utterly meritless.

Annie Lin's assertion that she did not understand how to prepare a declaration is belied by the assertion that per defendants' "attorneys' instructions, Annie drafted a document stating each person's name, that the individual used the product, the time when the individual used the product, and to include [a] line that the declaration was made under penalty of perjury." (Opp'n at 3; see Annie Lin Opp'n Decl. at ¶ 8). And even if Annie Lin did not receive sufficient instructions as to how to prepare a declaration, it strains credulity for defendants to claim that Annie Lin needed a reminder that any declaration that she prepared had to be accurate, true, and not fraudulently procured.

Further, the language barrier between Luong and Annie Lin was not nearly as formidable as defendants make it out to appear. Although a Cantonese translator attended Luong's deposition, defendants admit that Luong has more than sufficient oral command of the English language. (See Def'ts Second Fees Suppl. Opp'n at 4) ("In fact, Luong's command of English was such that . . . Luong's lawyer had to admonish her to wait for questions posed in English to be translated into Cantonese before she answered them."). Although Annie Lin has declared that Mandarin is her "native language," that is not to say that Mandarin is her only language or that she does not have oral command of the English language. (See Annie Lin Opp'n Decl. at ¶ 17) ("My native language is the Chinese dialect known as Mandarin.").

Finally, defendants' efforts to somehow question the conduct of the deposition because there were requests to go off the record by plaintiffs' counsel are plainly meritless because Luong

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[10] More recently, as part of defendants' pattern of providing shifting explanations for their conduct, defendants maintain that the evidence confirms that Luong "signed not only the declaration but all of the disputed letters bearing her name," and as such, were not forged. (See Def'ts Second Fees Suppl. Opp'n at 4) (emphasis in original). This argument misses the point entirely, for the issue is not whether Luong signed the declaration or letters, but rather, whether defendants drafted the false declaration and letters and encouraged and/or convinced Luong to sign them.

– a third-party witness – was represented by her own counsel at the deposition.[11] The fact that defendants chose not to send counsel to appear on their own behalf is not a reason to call into question Luong's deposition.[12] In any event, as discussed below, see infra at § II.A.2., it was defendants who attempted to prevent the taking of Luong's deposition and, given Luong's deposition testimony, it is easy to understand why defendants wanted to prevent the deposition from going forward.

In short, the court finds that the evidence is clear and convincing that defendants knowingly and fraudulently obtained and filed a false declaration by deceiving Luong into signing a fabricated declaration. The court further finds that the evidence is clear and convincing that the fraudulent Luong declaration was created personally and/or at the direction of defendant Lin and that the declaration was filed both in this court and the Ninth Circuit with the intent that the courts rely on the false declaration.

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[11] For example, defendants reference a sequence, (see Opp'n at 4), in Luong's deposition where she appears to testify that she did use ARëna products from Sis-Joyce in 2002. (See Luong Dep. at 19 (Q. "Is it true that you purchased ARëna products from Sis-Joyce in the year 2002 for personal use?" A. "Yes.")). But immediately after Luong testified in the affirmative to the question, the subsequent testimony ensued:

> Q. Let me ask the question again. You just told me you have never heard of ARëna a minute ago; correct?
> A. Except that when I purchased the products I had no knowledge of the name of the products.

(Id.). Counsel for plaintiffs confirmed, "[y]ou just told me you have never heard of ARëna a minute ago," because that was Luong's testimony a minute prior to her statement that she used ARëna products in 2002. (See id. at 18 (Q. "When you were at the parking lot in February of 2013 with Annie Lin, did you discuss a product called ARëna? That's A-R-e-n-a." A. "No." Q. "Before your involvement in this lawsuit had you ever heard of a product called ARëna?" A. "No, I have no recollection whatsoever.")).

Luong then testified two more times that it was not true, as her declaration states, that she "purchased ARëna products from Sis-Joyce in the year 2002 for personal use[.]" (See id. at 20-21) (citing Luong Decl.).

[12] Further, there was nothing preventing defendant Lin from attending Luong's deposition.

2. **Written Complaints by Amy Luong**.

Not only was Luong's declaration false and fraudulently procured, defendants subsequently tried to conceal their wrongdoing by inducing Luong to make and submit false complaints to the District Court for the Northern District of California. Plaintiffs assert that defendants "instructed Luong not to appear for deposition or to cooperate with plaintiffs, and then convinced Luong to sign and file still more false documents with the Northern District of California, where plaintiffs initiated an action seeking to compel Luong's deposition." (Motion at 4).

On April 10, 2013, plaintiffs served a deposition subpoena on Luong. (See Declaration of Ryan Q. Keech ("Keech Motion to Compel Decl.," Dkt. No. 151-1) at ¶ 7; id., Exh. E at 78). Luong refused to appear, requiring plaintiffs to file an action in the Northern District of California to compel her appearance. (See Declaration of Ryan Q. Keech ("Keech Motion for Leave Decl.," Dkt. No. 165-1), at ¶ 6 & Exh. C). The Northern District imposed contempt sanctions against Luong. (See id. at ¶ 10); Am. Rena Int'l Corp. v. Sis-Joyce Int'l Co., Ltd., Case No. 13-80142 (EMC) (N.D. Cal.) ("N.D. Cal. Action") (Order Finding Respondent Amy Huynh Luong in Contempt, and Ordering Sanctions ("Contempt Order", Dkt. No. 17)). It was only after the contempt sanctions were imposed that Luong finally agreed to appear for her deposition on September 5, 2013, nearly five months after being served with the subpoena.

At her deposition, Luong testified that when she was served with the deposition subpoena on April 10, 2013, she called Annie Lin and asked what the notice of deposition was about. (See Luong Dep. at 22-24). Annie Lin told Luong "to give her the letter, and she would take care of it." (Id. at 24). Luong gave Annie Lin the deposition notice at the supermarket parking lot where they had previously met. (See id. at 25). At that meeting, Annie Lin told Luong that the document asked Luong to go to court, (see id. at 24), but that "there was no need for [her] to go, [and] that [Annie's] sister would take care of it." (Id. at 25-26).

Luong testified that Annie Lin did not want her to attend her deposition. (See Luong Dep. at 30 (Q. "[D]id Annie Lin in April of 2013 tell you that she didn't want you to go to your deposition?" A. "Yes."). Annie Lin suggested that Luong avoid her deposition by saying that she had to take care of her husband's sister, who was ill. (See id.) (Q. "And did she suggest to you

that you can avoid your deposition by saying you had to take care of your husband's sister?" A. "Yes."). According to Luong, Annie Lin prepared a letter for her to submit to the court, (see id. at 26) (A. "[Annie Lin] told me that this notice related to asking me to go to court to testify. So she would prepare a letter for me so that I would not have to go to court."), which she gave to her at that time and stated as follows: "I, Amy Luong, will not be available for deposition, I have to take care of my terminal cancer patient. I will not be available until August 2013." (Id. at 27). Plaintiffs' counsel received this letter on April 25, 2013, bearing Luong's signature. (See Keech Motion to Compel Decl. at ¶ 9; id. at Exh. G).

After plaintiffs initiated the subpoena enforcement action against Luong, the Northern District Court of California received a letter on July 24, 2013, (dated July 18, 2013) purportedly from Luong, making various accusations against plaintiffs' counsel. (See Motion at 14; Keech Motion Decl. at ¶ 6); N.D. Cal. Action (July 18, 2013, Huong letter, Dkt. No. 7). The letter states that plaintiffs' counsel allegedly threatened Luong over the telephone with "tak[ing her] house, destroy[ing her] credit rating, and tak[ing] a lot of money from [her]" if she did not attend the deposition. See N.D. Cal. Action (July 18, 2013, Letter). The letter also stated that Luong "contacted the United States Attorney's Office in San Jose, California to file a complaint about [plaintiffs' counsel] and their agents." (Id.).

When Luong was presented with the July 18, 2013, letter at her deposition, she testified that Annie Lin had provided her with the letter at yet another meeting at the supermarket parking lot. (See Luong Dep. at 33-34). Along with the letter, Annie Lin gave Luong written step-by-step instructions. (See id. at 37 & 42); (Keech Motion Decl. at Exh. F). The instruction sheet directed Luong to sign and send the July 18, 2013, letter to the Clerk of the Court for the Northern District of California. (See Keech Motion Decl. at Exh. F). Specifically, the instructions told Luong to "print attached document" (the July 18, 2013, letter); "Make three photo copies;" sign those copies; "make 1 signed copy for Sis-Joyce;" "send 1 signed copy by certified mail" to the Clerk of the Northern District; send another copy to plaintiffs' counsel; "use Amy's name and address as the sender;" and, "[h]ave Amy call the U.S. Attorney's Office in San Jose (408) 535-5061 to file a complaint that she was threatened by the Quinn lawyer. Only call. If she cannot get through or

they say they can do nothing, it's ok." (Id.).

Luong testified that the accusations contained in the letter against plaintiffs' counsel were false. (Luong Dep. at 34-35) (Q. "And did Mr. Keech threaten to take your home in that conversation?" A. "No." Q. "And did Mr. Keech threaten to destroy your credit rating during that conversation?" A. "No." Q. "Did Mr. Keech threaten to take a lot of money from you during that conversation?" A. "No."). Luong also testified that the statements regarding the lodging of a complaint with the U.S. Attorney's Office were false. (See id. at 43) (Q. "And did you ever call the U.S. Attorney's Office to complain about Ryan Keech?" A. "No.").

On August 5, 2013, the Northern District of California granted plaintiffs' motion to compel Luong to appear for her deposition. See N.D. Cal. Action (Notice of Referral and Order re Motion to Compel and for Order to Show Cause, Dkt. No. 9). The Northern District of California received another letter from Luong, dated August 9, 2013. See id. (August 9, 2013, Huong letter, Dkt. No. 13). The letter, addressed to plaintiffs' counsel, stated "I hereby object again to your request to depose me. . . . I object for the same reasons as I did in my letter of July 18, 2013 – you have harassed and threatened me with the loss of my home, the destruction of my credit rating, and loss of a lot of money[.]" (Id.).

Again, Luong testified that she did not write the August 9, 2013, letter; rather, Annie Lin provided the letter to her at another meeting at the supermarket parking lot. (See Luong Dep. at 45). The August 9, 2013, letter was accompanied by another set of written instructions, identical to the ones provided in July 2013, which again included an instruction to call the U.S. Attorney's Office and make false accusations against plaintiffs' counsel. (See Keech Motion Decl. at Exh. G; Luong Dep. at 46 & 49-50).

Luong's persistent refusal to attend her deposition eventually resulted in her being held in contempt by the Northern District of California on August 23, 2013. N.D. Cal. Action (Contempt Order). However, that apparently made no difference to defendants, who continued to instruct Luong not to appear for her deposition. (See Luong Dep. at 32) (Q. "And so when you met with Annie about two weeks ago did she tell you again not to show up for your deposition?" A. "She did."). As noted above, Luong finally appeared for her deposition only after she was held in

contempt and retained counsel. (See id.) (Q. "But you thought it was getting more serious now, and so you hired a lawyer and have taken care of it?" A. "Yes, because I previously did not understand the ramifications. After my nephew explained it to us, I realized that it could be serious." Q. "And even when it became serious, Annie Lin asked you to not show up for your deposition still; right?" A. "Correct.").

Defendants do not deny that defendant Lin drafted the instructions and letters that Luong filed with the Northern District of California. (See, generally, Opp'n). Nor do they deny that they, directly or indirectly, devised the scheme to prevent Luong from appearing for her deposition. (See, generally, id.).[13] Nor could they because defendant Lin admitted at her deposition that she either wrote or was otherwise responsible for all the false letters which were provided to Luong. (Alice Lin Oct. 2013, Dep. at 320-21) (Q. "Turning back to Exhibit 73, Exhibit B, next page, please, did you prepare this letter to the Northern District of California?" A. "I don't remember for sure. But I believe so, because they were all prepared by me.") (July 18, 2013, letter); id. at 322-23 (Q. "Did you write that letter?" A. "I wrote it in Chinese, yes." Q. "And your sister helped you translate it?" A. "Yes." Q. "And that letter was supposed to be sent to the United States District Court, correct?" A. "I don't know for sure, but I know for a fact that it was sent to the lawyer at Quinn, as well as to the Court.") (August 9, 2013, letter). Defendant Lin also admitted that she personally prepared the instruction sheets that were provided to Luong, which gave detailed instructions as to how to file the letters with the courts and the false reports about plaintiffs' counsel with the U.S. Attorney's Office. (Alice Lin Oct. 2013, Dep. at 323-24) (referring to the written step-by-step instructions translated by Alice Lin: Q. "Does that refresh your recollection that you wrote that document, ma'am?" A. "I'm not sure about Item 9. But the rest, I did prepare them.").

Plaintiffs assert that defendants continued to rely on the false Luong documents even after

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[13] Defendants' failure to deny these serious allegations is tantamount to a concession on those issues. See GN Resound A/S v. Callpod, Inc., 2013 WL 1190651, *5 (N.D. Cal. 2013) (when plaintiff failed to oppose a motion as to a particular issue, "the Court construes as a concession that this claim element [is] not satisfied];" Hall v. Mortg. Investors Grp., 2011 WL 4374995, *5 (E.D. Cal. 2011) ("Plaintiff does not oppose Defendants' arguments regarding the statute of limitations in his Opposition. Plaintiff's failure to oppose . . . on this basis serves as a concession[.]").

plaintiffs filed the Prior Motion on May 31, 2013. (See Motion at 14-15). For example, on September 4, 2013, after defendants' prior counsel withdrew from the case, defendant Lin, proceeding pro se, filed an opposition to plaintiffs' ex parte application to take Luong's deposition. (See Opp'n to Taking Luong's Deposition). Defendant Lin attached Luong's declaration and the July 18 and August 9, 2013, letters to support her argument that the court should not permit plaintiffs to depose Luong after the discovery deadline. (See id. at ¶¶ 2-4 & Exhs. B, C & D). In the opposition, defendant Lin cited to and repeated the false allegations contained in the Luong declaration and the July 18 and August 9, 2013, letters.[14] (See id. at ¶ 2) ("[Luong] also stated that she had been threatened and harassed by the plaintiffs' attorney and his service agent every day on the telephone") (emphasis in original). Defendant Lin goes even further, in affirmatively declaring, under penalty of perjury, that "Plaintiff's agents have also called, oppressed and harassed Ms. Luong's son . . . [and s]uch unconsented contact (harassment) against a member of her family serves no legitimate purpose and reasonably causes Ms. Luong to suffer emotional distress[,]" (id. at ¶ 4), and "[Luong] has stated in her declaration [ ] and in her letters to the Court that she simply purchased my product and had nothing further to add." (Id.).

Again, defendants do not deny plaintiffs' allegations that Alice Lin – even after being put on notice that the Luong declaration and July 18 and August 9, 2013, letters were false – filed the fabricated Luong declaration and draft letters with this court. (See, generally, Opp'n). In short, the court finds that the evidence is clear and convincing that defendants knowingly and intentionally interfered with the judicial process when they fabricated, coordinated and directed the filing of false documents with the Northern District of California, actively misled Luong to prevent her from appearing for her deposition, and filed false documents with this court to prevent the court from arriving at the truth of the matters at issue in ruling on plaintiffs' ex parte application

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[14] While the letters filed with the Northern District of California bear Luong's signatures, the exhibits filed by Alice Lin do not. (Compare Opp'n to Taking Luong's Deposition at Exhs. B & C with N.D. Cal. Action (Dkt. Nos. 7 & 13). Defendant Lin fails to explain why and how she has in her possession draft, unsigned versions of the letters that were purportedly written by Luong. (See, generally, Opp'n). Defendant Lin's failure to explain this discrepancy provides further support to plaintiffs' assertion that defendant Lin drafted the letters containing the fabricated allegations.

seeking leave to depose Luong. The court also finds that defendant Lin lied when she filed her declaration of September 4, 2013, knowingly repeating the fraudulent allegations from the false Luong documents, and attaching the documents as exhibits.

3. **Violation of the Court's Preliminary Injunction**.

Plaintiffs also assert that defendants have violated the court's preliminary injunction and "have done so repeatedly[.]" (Suppl. Motion at 1). According to plaintiffs, "[t]hese violations further show that full terminating sanctions are needed to vindicate the sanctity of the judicial process." (Id.).

The court's preliminary injunction explicitly requires, among other things, that defendants "turn over and deposit with Plaintiffs' counsel all existing products in their possession, custody or control that bear the RENA or RENA BIOTECHNOLOGY marks or any of the Arena [ARëna] marks." (Court's Order of October 15, 2012, at 19).

On November 1, 2012, defendants filed a notice of their compliance with the court's preliminary injunction, in which defendant Lin declared that "[t]here were no such products existing and/or under the control of Sis-Joyce or myself to be turned over and deposited with Plaintiffs' counsel bearing the RENA or RENA BIOTECHNOLOGY marks or any of the Arena marks as of October 25, 2012." (Declaration of Alice Lin in Support of Notice of Compliance with Court Order ("Alice Lin's Decl. of Compliance," Dkt. No. 52-1) at ¶ 7). On January 11, 2013, more than two months after defendants certified to the court that they did not possess any Rena- or ARëna-branded products, Alice Lin produced an unopened ARëna product at her deposition. (See Suppl. Motion at 2; Alice Lin Jan. 2013, Dep. at 73-74). She also pulled from her purse an empty bottle bearing the RENA mark, (see Suppl. Motion at 3; Alice Lin Jan. 2013, Dep. at 136-137), and defendants' former counsel, Jew, agreed to take custody of it. (See Suppl. Motion at 3; Alice Lin Jan. 2013, Dep. at 149-50).

On July 5, 2013, Jew, in a declaration regarding his motion to withdraw as counsel, described defendants' alleged misconduct in violating the court's preliminary injunction. (See Reply Declaration of Leon E. Jew in Support of His Motion to Withdraw as Counsel for Defendants Sis-Joyce International Co. Ltd. and Alice Lin ("Jew Reply Decl," Dkt. No. 150-1)). Jew declared

that at Alice Lin's January 11, 2013, deposition, she produced "an empty 45 ml bottle with a 'RENA' mark, as a piece of physical evidence." (Id. at ¶ 3). Plaintiffs' counsel "pointed out that the empty bottle was within the scope of the preliminary injunction order" and "suggested that either he or [Jew] maintain custody of the empty bottle." (Id. at ¶ 4). Jew "agreed to maintain custody of the empty bottle." (Id. at ¶ 5). On January 19, 2013, defendant Lin visited Jew at his office to borrow the bottle. (See id. at ¶ 8). Jew "told her that she must return it to [him] as early as she can and she promised to return it to [Jew] soon." (Id.) Jew "requested Alice Lin many times to return the empty bottle," but as of July 3, 2013, Lin "ha[d] not yet returned it to" him. (Id. at ¶ 9).

Further, more than one year after the court issued the preliminary injunction, defendant Lin produced products bearing the ARëna mark at her second deposition on October 30, 2013. (See Alice Lin Oct. 2013, Dep. at 219; Suppl. Motion at 3). Defendant Lin testified that she found these bottles "in a drawer[,]" (see Alice Lin Oct. 2013, Dep. at 219), and admitted knowing that the court had ordered defendants to turn over all such products to plaintiffs "long ago." (Id. at 219-20).

Plaintiffs assert that defendants continue to violate the court's preliminary injunction because, "[t]o date, the RENA product [produced in January 2013] has never been turned over, and Defendants maintain possession of it in plain violation of the Injunction Order." (Suppl. Motion at 3). Plaintiffs point to Jew's declaration stating that "while he in fact did take possession of the RENA bottle after the deposition[,]" (id.) (citing Jew Reply Decl. at ¶ 5), "Lin subsequently reclaimed the bottle and refused to return it, despite repeated inquiries about compliance with the Injunction Order." (Id.) (citing Jew Reply Decl. at ¶¶ 8-11). Plaintiffs further assert that defendant Lin's declaration of compliance was false when she stated that no RENA or ARëna products existed or were under defendants' control. (See Suppl. Motion at 1; Alice Lin's Decl. of Compliance at ¶ 7). According to plaintiffs, defendant Lin's production of the enjoined items in January and October 2013, prove that her testimony to the court was false. (See Suppl. Motion at 4-5).

Defendants do not deny that they first violated the preliminary injunction order by failing to turn over enjoined Rena and ARëna items in their custody until January 11, 2013. (See, generally,

Suppl. Opp'n). Instead, defendants assert their violations were "minor" and that they "immediately complied with the vast majority of this Court's preliminary injunction, and turned over various small items that they later located once they were found[.]" (Id. at 2). As to the ARëna items produced by Alice Lin at her October 30, 2013, deposition, defendants claim that defendant Lin "produced everything she could find" after she "performed another search for any remaining" products. (Id. at 2). Defendants assert that "[i]t is important to note that Ms. Lin's business operates from her home and garage[,]" (id. at 4), but they do not explain why that alleged fact is important or how it supports their position. (See, generally, id.). Rather, the only inference to be made from that fact is that the enjoined items were in Alice Lin's possession and accessible to defendants, and they nevertheless failed to perform a timely search of Alice Lin's home. And while defendants contend that they turned over the ARëna products after conducting "another search," they nowhere state when they first performed a search of Alice Lin's home and garage. (See, generally, id.).

As to defendants' continuing violation of the court's preliminary injunction based on their repossession of the Rena bottle initially produced in January 2013, defendants provide a somewhat different account than that alleged by their former attorney. While Jew stated that Alice Lin took the bottle from him on January 19, 2013, and refused to return it despite his multiple requests that she do so, (see Jew Reply Decl. at ¶¶ 8-9), defendants contend that it was Annie Lin who took the Rena bottle from Jew's office in June 2013, and that Jew never asked Annie Lin for its return. (See Suppl. Opp'n at 2 & 6; Declaration of Annie Lin ("Annie Lin Suppl. Opp'n Decl.," Dkt. No. 237-3) at ¶¶ 2 & 3; Declaration of Alice Lin ("Alice Lin Suppl. Opp'n Decl.," Dkt. No. 237-2) at ¶ 13). Defendants assert that Jew's declaration "is suspect, primarily due to the fact that he was absolutely desperate to get out of the case[.]" (Suppl. Opp'n at 4).

Based on defendant Lin's fabrication and filing of false declarations and her scheme to prevent Luong from testifying, see supra at § II.A., she has little if any credibility, and it is therefore likely that the court's resolution of the disputed facts concerning the chain of custody of the Rena

bottle would not fare well for defendants.[15] The court, however, need not resolve the relatively insignificant difference between Jew's, defendant Lin's, and Annie Lin's declarations, since defendant Lin's own version of the facts proves that defendants violated the court's preliminary injunction. In support of defendants' supplemental opposition, Alice Lin declared that she personally instructed Annie Lin, her sister and Sis-Joyce's employee, to collect the Rena bottle from Jew in June 2013. (See Alice Lin Suppl. Opp'n Decl. at ¶ 13). Defendant Lin directly arranged for the Rena bottle to fall back into the custody and control of Sis-Joyce, in spite of her knowledge that the court prohibited defendants from maintaining any Rena bottle "in their possession, custody or control." (Court's Order of October 15, 2013, at 19). The enjoined bottle thereafter remained in possession of defendants' employee, Annie Lin, for about six months, until Annie Lin "gave it to Alice Lin," during the week of December 2, 2013. (See Annie Lin Suppl. Opp'n Decl. at ¶ 3).

Defendants remain in violation of the preliminary injunction to this day. Defendants state that the Rena bottle "is now in the custody of Defendants' current counsel[,]" (Suppl. Opp'n at 4; see Declaration of Ali Kamarei, Dkt. No. 237-1, at ¶ 2), ostensibly to show that defendants have cured any violation. However, the preliminary injunction explicitly requires defendants to "turn over and deposit with Plaintiffs' counsel" all Rena or ARëna products in their "possession, custody or control." (Court's Order of October 15, 2013, at 19). Defense counsel provides no explanation why they have not turned over the subject bottle to plaintiffs' counsel.

Nor do defendants provide any explanation for the glaring contradiction between defendant Lin's declaration in which she represented to the court that "[t]here were no such products existing and/or under the control of Sis-Joyce or myself to be turned over and deposited with Plaintiffs' counsel bearing the RENA or RENA BIOTECHNOLOGY marks or any of the Arena marks as of October 25, 2012," (Alice Lin's Decl. of Compliance at ¶ 7), and the subsequent productions of the enjoined items. (See, generally, Suppl. Opp'n). Defendants make no attempt to explain the

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[15] Nor does the court give any credence to defendants' most recent argument that Alice Lin somehow felt she had no choice but to violate the preliminary injunction because she distrusted Jew. (See Def'ts Second Fees Suppl. Opp'n at 12).

irreconcilable discrepancies between the representations made to the court in Alice Lin's notice of compliance with the preliminary injunction and her later conduct. (See, generally, id.). Defendants' silence in the face of plaintiffs' contention that Alice Lin's testimony was false amounts to their admission. See GN Resound A/S, 2013 WL 1190651, at *5; Hall, 2011 WL 4374995, at *5.

In short, the evidence is clear and convincing that despite defendants' ongoing obligations to turn over all products bearing the ARëna mark to plaintiffs, defendants failed to comply with the preliminary injunction order by failing to turn over to plaintiffs' counsel all products bearing the RENA or RENA BIOTECHNOLOGY marks or ARëna marks. Further, the court finds that defendant Lin made false representations to the court in her November 1, 2012, declaration, when she stated that no products existed and/or were under the control of Sis-Joyce or Alice Lin bearing the RENA or RENA BIOTECHNOLOGY marks or any of the ARëna marks as of October 25, 2012.

The court's preliminary injunction also prohibits "referencing, mentioning and/or using in any way the purported Arena marks . . . in connection with the sale of products;" "selling, advertising, or making any other use of a bottle and/or label that is confusingly similar to Rena's bottles and labels, including the 0.51 ounce bottle currently used by Defendants to sell 'ARëna,' 'aRena,' 'aRENA,' and 'NEW! ARËNA ACTIVATION ENERGY SERUM products;'" "advertising, marketing, or describing 'ARëna,' 'aRena,' 'aRENA,' and 'NEW! ARËNA ACTIVATION ENERGY SERUM' products in any manner likely to mislead consumers as to the source of such products and/or their affiliation with Rena;" and "posting, maintaining, displaying or performing promotional videos or advertisements for genuine RENA products or Defendants' 'ARëna,' 'aRena,' 'aRENA,' and 'NEW! ARËNA ACTIVATION ENERGY SERUM products.'" (Court's Order of October 15, 2012, at 19-20).

Plaintiffs assert that in February 2015, they discovered a website, "www.iarenausa.net" that uses the prohibited "ARëna" mark (along with the name of defendant Sis-Joyce) throughout the website and represents another attempt to advertise and sell ARëna products in direct violation of the court's preliminary injunction. (See Notice re Prelim. Inj. at 3). Specifically, plaintiffs assert

the following violations of the preliminary injunction:

• The home page of the website displays enjoined "NEW! ARËNA ACTIVATION ENERGY SERUM" products, in the enjoined bottles, using the slogan "Your skin's favorite WATER," next to an image of a woman and below the "Sis-Joyce Co." name. (Supplemental Declaration of Ryan Q. Keech ("Keech Prelim. Inj. Decl.," Dkt. No. 274-3), Exh. A at 1).

• The "About us" section of the website claims that "ARëna is a NEW material" and advertises "NEW Upgraded ARëna." (Id., Exh. A at 7; id., Exh. B at 7).

• The "Reading" section of the website contains references to ARëna, including a large image of "Sis-Joyce Activation Energy Serum" next to an image of enjoined "NEW! ARËNA ACTIVATION ENERGY SERUM" products, in the prohibited bottles. (Id., Exh. A at 17; id., Exh. B at 18).

• The "Contact Us" section of the website uses the prohibited "ARëna" mark next to an invitation for users to contact Sis-Joyce, below a "Members Login" button at the top of the page, which links back to defendants' www.sisjoyce.com website. (Id., Exh. A at 37; id., Exh. B at 35-39).

(Notice re Prelim. Inj. at 3). WhoIs records show that www.iarenausa.net is registered to "Perfect Privacy LLC," a company that apparently specializes in concealing the names of domain registrants. (See id. at 5; Keech Prelim. Inj. Decl. at ¶ 5 & Exh. C). WhoIs records also show that the virtually identical domain name – www.iarenausa.com – is registered to defendant Sis-Joyce International, Ltd.[16] (Notice re Prelim. Inj. at 5; Keech Prelim. Inj. Decl. at ¶ 5 & Exh. C).

On February 23, 2015, plaintiffs notified defendants of the infringing website and the alleged

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[16] Defendants assert that WhoIs records showing ownership of domains are "not to be relied on." (Prelim. Inj. Opp'n at 5). But defendants also assert that the WhoIs records showing their control over the www.iarenausa.com domain are accurate. (Defendants' Objection to American Rena International Corporation, et al.'s Reply in Support of Plaintiffs' Ex Parte Application for Leave to File Additional Notice, Dkt. No. 278, at 1 ("Sis-Joyce readily admits to that fact" that www.iarenausa.com is registered to Sis-Joyce). In any event, such records properly may be considered. See Gordon v. Virtumundo, Inc., 575 F.3d 1040, 1064 & n. 22 (9th Cir. 2009) (recognizing that WHOIS is "a publically available online database through which users can access information regarding domains, including the registrant's name, address, phone number, and e-mail address"); Register.com, Inc. v. Verio, Inc., 356 F.3d 393, 395 (2d Cir. 2004) (similar).

violations of the preliminary injunction. (See Notice re Prelim. Inj. at 4; Declaration of B. Dylan Proctor ("Proctor Decl.," Dkt. No. 274-1) at Exh. A). Defendants responded the next day that they could not evaluate any of plaintiffs' claims because "the www.iarenausa.net website [plaintiffs] described does not appear to exist." (Proctor Decl. at Exh. B). Prior to advising defendants of the infringing website, plaintiffs had downloaded a complete copy of the website. (Prelim. Inj. Reply at 3-4).

Defendants assert that there are no facts showing "that Defendants had anything to do with the putting up or the taking down of the iarenausa.net website of which Plaintiffs complain." (Prelim. Inj. Opp'n at 1). Defendants further assert that, "on the record before the Court, the offending website could have been put up by anyone with an interest in using Plaintiffs' lawsuit to be rid of Sis-Joyce as a competitor." (Id. at 4). Defendants' assertions are unpersuasive.

As an initial matter, defendants do not and cannot dispute that the www.iarenausa.net website is infringing and violates the preliminary injunction. (See, generally, Prelim. Inj. Opp'n). Further, defendants' efforts to distance themselves from the site by denying that they operate or control it are unpersuasive. For example, as plaintiffs note, the "only toll-free telephone number listed on the www.iarenausa.net website is Defendants' toll-free telephone number, also listed on the Defendants' www.sisjoyce.com website." (Prelim. Inj. Reply at 2; compare Keech Prelim. Inj. Decl., Exh. A, at 8-38 (www.iarenausa.net website asking the public to contact the operator of the site at 1-855-690-8889) with Declaration of Alice Lin in Response to Plaintiffs' Additional Violations of Preliminary Injunction ("Alice Lin Prelim. Inj. Decl.," Dkt. Nos. 282-3 to 282-7) Exh. A at 3, 12-14 (www.sisjoyce.com website asking the public to contact Sis-Joyce at 1-855-690-8889). Also, the only email address listed on the infringing website is defendants' email address that was in use on the www.sisjoyce.com website as of 2012, when the preliminary injunction was issued.[17] (Prelim. Inj. Reply at 2; Alice Lin's Decl. of Compliance, Exh. A at 25, 29, 30-36, 38 & 40-91). Under the circumstances, defendants' assertion that the infringing website could have been

[17] Plaintiffs give other examples of the infringing website's content that points to defendants use and control of the website. (See Prelim. Inj. Reply at 2-3).

operated by "anyone," such as a competitor, (see Prelim. Inj. Opp'n at 4), strains credulity.

Further, the circumstances regarding the taking down of the infringing website are, to say the least, suspicious. While the website was live on February 23, 2015, it was, inexplicably, taken down within hours after plaintiffs notified defendants of the website. (See Prelim. Inj. Reply at 3). Also, defendant Lin states that during a telephone conference with Sis-Joyce "members" after receiving the February 23, 2015, notice from plaintiffs' counsel, she "mentioned the iarenausa.net website and it was causing a problem." (Alice Lin Prelim. Inj. Decl. at ¶ 14.l). Although there is no indication as to the date and time of the conference call – other than it occurred after receiving notice from plaintiffs' counsel of the infringing website – defendant Lin's declaration suggests that she and/or one of her agents, i.e. members, were likely aware of, if not responsible for, the infringing website.

The court's preliminary injunction applies not only to defendants but also to all others acting in concert or participation with them. See Fed. R. Civ. P. 65(d)(2)(B) & (C) (injunction orders apply to defendants' "officers, agents, servants, employees and attorneys [and] other persons who are in active concert or participation with [them]"); Golden State Bottling Co., Inc. v. N.L.R.B., 414 U.S. 168, 179, 94 S.Ct. 414, 422-23 (1973) ("A decree or injunction not only binds the parties defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control."). Thus, any "member" who supposedly set up or took down the site was clearly within defendants' actual control and subject to defendants' contractual agreement. See, e.g., Netlist Inc. v. Diablo Techs. Inc., 2015 WL 163434, *1-2 (N.D. Cal. 2015) (Because the objectives of an injunction may be "thwarted by the conduct of parties not specifically named," "contracting partners of the defendant [can]not sell the infringing products any more than the defendant who was expressly barred from doing so by the original order.").

Finally, it should be noted that defendant Lin's declaration indicates that defendants continue to violate the preliminary injunction in other ways. Although the preliminary injunction prohibits all sales or promotions of ARëna products, (see Court's Order of October 15, 2012, at 19-20) (ordering defendants to cease "referencing, mentioning and/or using in any way the purported Arena marks … in connection with the sale of products"), defendants continue to use

a member agreement on their www.sisjoyce.com website that sets forth the terms and conditions by which a user can become an "Arëna Sales Distributor." (Alice Lin Prelim. Inj. Decl., Exh. D at § 8:3). Defendant Lin claims "the [products] most frequently sold by our member independent sales distributors are ARëna products." (Id. at ¶ 13.c; see id. (while members can sell any number of products, "ARëna products … are" the "product most often sold" pursuant to Sis-Joyce's member agreement). Defendants specify the terms and conditions governing these sales in their member agreement, (see Alice Lin Prelim. Inj. Decl. at Exh. D), including the requirement that members "must have the mark 'ARëna Sales Distributor'" on "business cards using the company's name."[18] (Id. at § 8:3). Sis-Joyce's member agreement also uses the enjoined "ARëna" mark repeatedly. (See, e.g., id. at § 8) (Section regarding "ARëna trade mark, logo, copyright and business card," which requires that members "[m]ust not use Sis-Joyce or ARëna trade mark, logo to do other business").

In short, while the evidence that defendants violated the preliminary injunction by supporting or controlling the infringing website is not clear and convincing, the evidence that defendants violated the preliminary injunction by continuing to use the ARëna marks in its member agreements on its own website is clear and convincing. Pursuant to the preliminary injunction, defendants have no right to utilize member agreements that promote sales of enjoined ARëna products. Defendants' use of the member agreements on the Sis-Joyce website make it clear that defendants continue to violate the terms of the preliminary injunction to this day.

B. Bad Faith and Willfulness.

"Before awarding sanctions pursuant to its inherent power, the court must make an express finding that the sanctioned party's behavior constituted or was tantamount to bad faith." Haeger, 793 F.3d at 1132 (internal quotation marks omitted); see Leon, 464 F.3d at 958; Anheuser-Busch,

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[18] Defendant Lin asserts that plaintiffs' attorneys were aware of the member agreement and did not ask for any changes to the agreement. (See Alice Lin Prelim. Inj. Decl. at ¶ 12). However, plaintiffs contend that they did not know about the member agreement, as it was not included in defendants' notice of compliance. (See Prelim. Inj. Reply at 6 & n. 3). Further, given how aggressively plaintiffs have pursued potential violations of the preliminary injunction, the court has no reason to doubt that had plaintiffs' counsel been aware of the member agreement, they would have immediately brought that matter to the court's attention.

69 F.3d at 348. "Actions constituting a fraud upon the court or actions that cause the very temple of justice [to be] defiled are . . . sufficient to support a bad faith finding." Haeger, 793 F.3d at 1133 (internal quotation marks omitted). Under the circumstances, the court has little difficulty concluding that defendants acted in bad faith in this litigation.

1. **False Declaratory Evidence and Obstruction of Justice**.

Courts have found bad faith stemming from "a full range of litigation abuses," Chambers, 501 U.S. at 46, 111 S.Ct. at 2134, many of which are present in this case. For example, it is well-settled that fabricating and submitting knowingly false evidence amounts to willful and bad faith conduct.[19] See, e.g., Newman v. Brandon, 2012 WL 4933478, *4 (E.D. Cal. 2012), report and recommendation adopted, Civ. Case No. 10-0687AWI (JLT) (2013) (submission of perjured testimony going to material issues in the case "was an act of bad faith which undermines the confidence placed in our system of justice"); Uribe v. McKesson, 2011 WL 3925077, *4 (E.D. Cal. 2011) (bad faith found where declarant "never saw or read the declaration prior to Plaintiff forging his name to the document" and plaintiff "attempted to 'teach' him what to say to help Plaintiff win his lawsuit"); Sunrider Corp. v. Bountiful Biotech Corp., 2010 WL 4590766, *22 (C.D. Cal.), report and recommendation adopted, 2010 WL 4589156 (2010) (bad faith found when party "knowingly ma[de] false statements under oath or penalty of perjury," and "repeatedly and willfully disregarded his discovery obligations and disobeyed court orders to provide or permit discovery"); Combs v. Rockwell Int'l Corp., 927 F.2d 486, 488 (9th Cir. 1991) (affirming bad faith finding where plaintiff "attempted to deceive the district court" by changing deposition evidence going to material "issues of central importance in the upcoming summary judgment hearing"); Da-Silva v. Smith's Food &

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[19] Also, submitting false and perjured evidence such as the declarations at issue may constitute a crime under state and federal law. See, e.g., Cal. Penal Code § 132 ("Every person who upon any trial, proceeding, inquiry, or investigation whatever, authorized or permitted by law, offers in evidence, as genuine or true, any book, paper, document, record, or other instrument in writing, knowing the same to have been forged or fraudulently altered . . . is guilty of a felony."); 18 U.S.C. § 1621 ("Whoever . . . in any declaration, . . . or statement under penalty of perjury . . . willfully subscribes as true any material matter which he does not believe to be true[] is guilty of perjury[.]"); see also People v. Bhasin, 175 Cal.App.4th 461, 468 (2009) ("There simply is no requirement that a document must be moved into evidence in order to constitute a violation of section 132.").

Drug Ctrs., Inc., 2013 WL 2558302, *4 (D. Nev.), report and recommendation adopted, Civ. Case No. 12-0595 GMN (VCF) (2013) (bad faith found when plaintiff wilfully provided false deposition testimony); Garcia v. Berkshire Life Ins. Co. of Am., 569 F.3d 1174, 1177-78 & 1180 (10th Cir. 2009) ("especially egregious" case of bad faith where plaintiff forged four documents including from disgruntled ex-employee accusing former employer of unfair business practices); Englebrick v. Worthington Indus., Inc., 944 F.Supp.2d 899, 909 (C.D. Cal. 2013) aff'd in part and rev'd in part on other grounds, 2015 WL 4071553 (9th Cir. 2015) ("Providing false or incomplete information during a deposition or in a response to a discovery request constitutes the sort of willfulness, bad faith, or fault required for dismissal."). Such willful and bad faith conduct provides grounds for the imposition of the sanction of default judgment and dismissal. See Combs, 927 F.2d at 488.

In Newman, a case similar to the instant case, the court had "no hesitation in finding that Plaintiff's actions were willful and made in bad faith" where a plaintiff prisoner submitted false declarations of purported witnesses and "knowingly filed these documents despite his knowledge of their falsity." 2012 WL 4933478, at *2 & *4. The court found "the statements of the witnesses in these falsified declarations go to material issues in this case; whether Defendant [] used excessive and unnecessary force against Plaintiff." Id. at *4. The court further found that "[i]t is clear that Plaintiff intended the Court to rely upon this perjured testimony when evaluating Defendants' motion for summary judgment." Id.

As in Newman, defendants here "prepared . . . declarations and included the false information[,]" and as for Luong, defendants "presented the declaration to [her] but . . . did not allow [Luong] to read it." 2012 WL 4933478 at *3; see id. at *4 ("Because Plaintiff himself drafted these false declarations and obtained signatures on them using trickery, the Court finds that Plaintiff knew the documents were falsified."). The Win, Chen, and Luong declarations were fabricated for the purpose of establishing and supporting defendants' prior use defense. Defendants clearly intended the Ninth Circuit and this court to rely on the fraudulent evidence in evaluating the merits of the parties' trademark claims, even though they knew the evidence was manufactured.

Defendants attempt to distinguish this case from Newman by arguing that they "did not draft

the declarations themselves and did not know whether . . . they were falsified[,]" (Opp'n at 22), and did not act in bad faith because they never "instructed anyone acting under their authority or on their behalf to fabricate information or to obtain false signatures on declarations." (Id. at 2; Alice Lin Opp'n Decl. at ¶ 5). However, as discussed above, that argument is contradicted by the evidence, which shows that defendant Lin drafted and/or directed Sis-Joyce's employee, Annie Lin, to draft and obtain the false declarations. See supra at §§ II.A.1.a.-c.

Defendants also argue that their procurement and submission of the false declarations was due to defendant Lin's "lack of exposure or understanding of the American legal system" and her prior attorney's failure to explain "the proper procedural method or requisite due diligence needed prior to obtaining and submitting declarations." (Opp'n at 1). Even if the court were to construe this argument as a contention that defendants could not have acted in bad faith or should not be penalized for their misconduct because the conduct was outside their control, see, e.g., Stars' Desert Inn Hotel & Country Club, Inc. v. Hwang, 105 F.3d 521, 525 (9th Cir. 1997) ("conduct not shown to be outside the control of the litigant is sufficient to demonstrate willfulness, bad faith or fault warranting default"), the argument is utterly meritless. First, whatever misunderstanding defendants had concerning their counsel's instructions or explanations, it does not qualify as conduct outside of their control such as to excuse their misconduct. See Nat'l Corporate Tax Credit Funds III, IV, VI, VII v. Potashnik, 2010 WL 457626, *4 (C.D. Cal. 2010) (a party's "misunderstanding [of her] own counsel are not matters outside of a party's control"); see also Link v. Wabash R.R. Co., 370 U.S. 626, 634, 82 S.Ct. 1386, 1390 (1962) (a client "is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney'"). Second, as the court noted earlier, even a "simple person [such as defendant Lin] who has a very limited ability to speak and understand English," (Opp'n at 1), knows (or should know) that submitting false evidence to a court is wrong. "Only an inundation of naivete and credulity would lead to an acceptance of" these arguments. United States v. Thompson, 109 F.3d 639, 642 (9th Cir. 1997).

Indeed, contrary to defendants' assertion that defendant Lin is a "simple person," (Opp'n at 1), the evidence in the record indicates otherwise. Defendants previously represented to the

court that Alice Lin is a person of "entrepreneurial spirit" who began a grass roots business selling personal care products, which she expanded to the extent that "[s]he incorporated as Sis-Joyce Corporation in 2004, and later re-incorporated as Sis-Joyce International Co., Ltd. in 2010." (Opp'n to Motion to Dismiss Counterclaims at 1). Alice Lin testified that in 2004 and 2005, Sis-Joyce's sales yielded about $8 million in each of those years. (See Alice Lin Oct. 2013, Dep. at 239-241). But perhaps more importantly, the evidence that Alice Lin drafted the declarations and devised the scheme to keep plaintiffs from deposing Luong, see supra at §§ II.A.1-2, demonstrates that Alice Lin is indeed sophisticated, disingenuous, and in control of the direction of defendants' litigation.

In Hyde & Drath v. Baker, 24 F.3d 1162 (9th Cir. 1994), the court considered plaintiff's purported excuses for misconduct when the plaintiff corporations failed to appear for depositions. The Ninth Circuit explained that "[a]lthough the evidence is not conclusive, there is enough in the record for the district court to have properly decided that [the individual plaintiff] influenced, if not controlled, the [plaintiff] corporations' wrongful behavior during discovery." Id. at 1168. The plaintiff argued that he could not control and was therefore not responsible for the misconduct, even though he had personally answered and verified interrogatory responses propounded on the corporations. See id. at 1169. The plaintiff explained that "he had not read through the answers and was ignorant of the information before swearing that the responses were accurate." Id. The Ninth Circuit rejected the plaintiff's contentions and held that "the district court had sufficient evidence of [his] control of the lawsuit to have inferred that [he] also influenced the corporations' failure to appear at depositions." Id.

As in Hyde & Drath, there is sufficient evidence of Alice Lin's control of defendants' overall conduct in this case. As discussed, Alice Lin devised the plan with respect to the three declarations, having both drafted them and provided instructions to Sis-Joyce's employee, Annie Lin, on how to draft and finalize the declarations. See supra at § II.A.1. She also devised the scheme to prevent Luong from appearing for her deposition, and again instructed Annie Lin on carrying out that scheme. See id. at § II.A.2. When defendants' prior counsel withdrew from the case, Alice Lin filed documents opposing plaintiffs' ex parte application seeking leave to take the

deposition of Luong. (See, e.g., Opp'n to Taking Luong's Deposition). In support of her pro se opposition, Lin filed the fraudulent Luong declaration and the July 18 and August 9, 2013 letters, knowing that the documents were false.

Finally, the court has already found that defendant Lin controlled the direction and strategy of this litigation. Specifically, in granting Jew's motion to withdraw, the court took into consideration Jew's statement that his "continued employment will result in violation of the Rules of Professional Conduct," (Court's Order of July 29, 2013, at 2), and gave credence to his contention that "Defendants insist[ed] upon presenting defenses that, pursuant to . . . counsel's belief, are not warranted under existing law and cannot be supported by good faith argument for a modification or reversal of existing law." (Id.). In short, the evidence belies Alice Lin's contentions that the misconduct here was beyond her control.

The court has undertaken a careful examination of the evidence in the record and concludes that the evidence is clear and convincing that defendant Lin fabricated and submitted to this court and the Ninth Circuit the Win, Chen, and Luong declarations. See supra §§ II.A.1.a-c. The court also examined the arguments and evidence concerning plaintiffs' assertions that defendants obstructed discovery, and thus the administration of justice, when they made multiple efforts to prevent plaintiffs from deposing Luong. See supra at § II.A.2. Specifically, the court finds that defendants knowingly carried out a scheme, directly and indirectly through their employee Annie Lin, to prevent Luong from appearing for her deposition. See id. The scheme included: instructing Luong not to appear for her deposition; writing letters that contained false allegations against plaintiffs' counsel, with instructions that Luong file them with the Northern District of California in plaintiffs' separate action to enforce the Luong subpoena; and filing the fabricated Luong declaration in this court and repeating the false allegations in the Luong letters in their effort to persuade this court to deny plaintiffs leave to depose Luong. See id.

"[O]bstructionist tactics employed solely to frustrate [a party's] ability to defend itself in [an] action and . . . its pursuit of asserted [c]laims[]" wrongfully interferes with the administration of justice. Vargas v. Peltz, 901 F.Supp.1572, 1578 (S.D. Fla. 1995) (finding obstruction of justice where motion for sanctions exposed "a litany of lies told by Plaintiff . . . during discovery in th[e]

case," and "introduction of fabricated evidence"). Here, the court finds that the evidence is clear and convincing that defendants acted willfully, intentionally, and in bad faith when they obtained and filed fraudulent declarations in the Ninth Circuit and this court, and obstructed discovery and caused false documents to be submitted to the Northern District of California in an attempt to prevent Luong from being deposed.

2. **Violation of Preliminary Injunction**.

The conduct referenced above, see supra at § II.A.1-2., is more than sufficient – on its own – to justify the imposition of terminating sanctions. See, e.g., Newman, 2012 WL 4933478, at *4 ("[P]erjury on any material fact strikes at the core of the judicial function and warrants a dismissal of one's right to participate at all in the truth seeking process."); Uribe, 2011 WL 3925077, at *5 ("dismissal is the only sanction that adequately redresses the severity of Plaintiff's misrepresentations to this Court" by filing a false and fraudulently procured declaration). However, defendants' lack of compliance with the preliminary injunction reflects a continuation of defendants' pattern of litigation misconduct and will be considered in assessing the type and scope of the sanctions to be imposed.

"A person fails to act as ordered by a court when he fails to take all the reasonable steps within his power to insure compliance with the court's order." Gifford v. Heckler, 741 F.2d 263, 265 (9th Cir. 1984) (internal quotation and alteration marks and citation omitted). "[A party's] failure to respond to the court's order establishes willfulness [when he] has not shown his disobedience to be outside his control." Evans v. Insulation Maint. & Contracting, 2013 WL 1315414, *1 (D. Nev. 2013) (internal quotation and alteration marks omitted). Having already found that defendants violated, and continue to violate, the court's preliminary injunction, see supra at § II.A.3., the court now examines whether defendants took all reasonable steps within their power to comply with the preliminary injunction, or whether their disobedience was outside their control, such that it would be unjust to hold them responsible.

As noted above, defendants violated the injunction by failing to turn over products bearing the disputed marks to plaintiffs' counsel. See supra at § II.A.3. Defendants do not deny that they withheld and failed to turn over products covered by the preliminary injunction. (See, e.g., Suppl.

Opp'n at 4) (at least one enjoined item remains in the custody of defense counsel to this day). Instead, they assert that their "inadvertent violation should not be grounds for terminating sanctions." (Id. at 6). Defendants assert that Alice Lin's lack of compliance with the preliminary injunction was due in part to her asserted illness that lasted from November 2012 – coincidentally the month after the injunction was issued – to September 18 or 19, 2013, when she had heart surgery. (See id. at 3). Defendants also assert that they should be excused from violating the preliminary injunction because defendant "Lin never fully understood the preliminary injunction order to apply to Rena products as well as ARëna products[.]" (Suppl. Opp'n at 4; see Alice Lin Suppl. Opp'n Decl. at ¶ 11). Defendants' assertions are unpersuasive.

Alice Lin's November 1, 2012, statement of compliance with the preliminary injunction is very clear with respect to the scope of defendant Lin's compliance. Alice Lin, declares, under penalty of perjury, that "[t]here were no . . . products existing and/or under the control of Sis-Joyce or myself to be turned over and deposited with Plaintiffs' counsel bearing the RENA or RENA BIOTECHNOLOGY marks or any of the Arena marks as of October 25, 2012." (Alice Lin's Decl. of Compliance at ¶ 7). Thus, defendants' assertion that defendant Lin did not fully understand the scope of the preliminary injunction is belied by Lin's November 1, 2012, declaration. Further, whether defendant Lin may have misunderstood the scope of the court's order based on her counsel's representations is insufficient to establish that compliance with the preliminary injunction was outside her control. See Nat'l Corporate Tax Credit Funds, 2010 WL 457626, at *4 (a party's "misunderstanding [of her] own counsel are not matters outside of a party's control"). Finally, defendant Lin's current declaration provides no information as to when or how many searches she conducted since the preliminary injunction issued – on October 15, 2012 – to locate Rena or ARëna products that were required to be turned over pursuant to the preliminary injunction. (See, generally, Alice Lin Suppl. Opp'n Decl.). The only reference to any search is the one that was apparently conducted after defendants' third set of attorneys asked defendant Lin to search for any remaining products that could be violating the preliminary injunction. (See id. at ¶ 9).

Alice Lin's assertion that throughout the relevant time period, she was suffering from "severe medical problems [that] have interfered with both her daily life and her ability to defend

and prosecute this action," (Suppl. Opp'n at 3; Alice Lin Suppl. Opp'n Decl. at ¶ 4), is belied by the record. For example, on September 4, 2013 – just days before her heart surgery on September 18, 2013 – defendant Lin, proceeding pro se, filed an opposition to plaintiffs' ex parte application to take Luong's deposition. (See Opp'n to Taking Luong's Deposition). While Lin's medical condition apparently kept her from complying with the court's preliminary injunction, it did not keep her from continuing to file false documents with the court.

Also, defendants' failure to turn over to plaintiffs' counsel the products identified in the preliminary injunction, one of which apparently is "in the custody of Defendants' current counsel," (Suppl. Opp'n at 4), continues to be a violation of the preliminary injunction.[20] See supra at § II.A.3. Moreover, as noted earlier, by continuing to use the ARëna marks in its member agreements, defendant Sis-Joyce is in violation of the preliminary injunction. See id.

In short, there is no basis for the court to conclude that defendants took all reasonable steps to comply with the court's preliminary injunction. There is nothing before the court suggesting that defendants' transgressions were outside of their control.[21] Rather, the only reasonable conclusion based on the evidence is that defendants willfully disobeyed the court's preliminary injunction order. See United States v. United Mine Workers of Am., 330 U.S. 258, 333-34, 67 S.Ct. 677, 715 (1947) ("It is plain that the defendants acted willfully for they knew that they were disobeying the court's order.").

C. The Five-Factor Terminating Sanctions Balancing Test.

Having concluded that defendants engaged in various acts of litigation misconduct willfully and in bad faith, see supra at § II.B., the court now turns to the Ninth Circuit's five-prong test to

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[20] Defendants have not submitted evidence showing that the parties entered into an agreement allowing, or that plaintiffs otherwise consented to, defendants' counsel maintaining possession of the enjoined products. (See, generally, Opp'n; Suppl. Opp'n).

[21] Indeed, defendants' assertion that their business is operated out of Alice Lin's home undermines any claim that defendants could not have taken reasonable steps to comply with the court's preliminary injunction. See Fair Hous. of Marin v. Combs, 285 F.3d 899, 905-06 (9th Cir.), cert. denied 537 U.S. 1018 (2002) (holding that defendant's failure to produce documents that allegedly did not exist was not outside defendant's control because they were later found hidden in his apartment).

determine whether to impose terminating sanctions against defendants. See Leon, 464 F.3d at 958; Hous. Auth. of Los Angeles, 782 F.2d at 831.

1. **Factors 1 and 2: Public's Interest in Expeditious Resolution of Litigation and the Court's Need to Manage Its Docket**.

As an initial matter, defendants do not address the first two factors in their Opposition. (See, generally, Opp'n at 12-22). In any event, these factors, the public's interest in expeditious resolution of this action and the court's need to manage its docket, see PPA Prods. Liab. Litig., 460 F.3d at 1227 (explaining that the first two factors are usually reviewed together), weigh in favor of terminating sanctions. "The public and this Court have an interest in securing the just, speedy and inexpensive determination of all actions[.]" Bump Babies Inc. v. Baby The Bump, Inc., 2011 WL 5037070, *6 (C.D. Cal.), report and recommendation adopted, 2011 WL 5036919 (2011) (internal quotation marks and citation omitted). "Orderly and expeditious resolution of disputes is of great importance to the rule of law. By the same token, delay in reaching the merits . . . is costly in money, memory, manageability, and confidence in the process." PPA Prods. Liab. Litig., 460 F.3d at 1227; see id. at 1234 ("Sound management of the court's docket also counsels in favor of sanctions as a deterrent to others[.]").

Here, defendants' litigation misconduct, see supra at § II.A., has "greatly impeded the resolution of the case by obscuring the factual predicate of the case and consuming months of sanction-related litigation." Leon, 464 F.3d at 959 n. 5 (internal quotation mark and citation omitted); see Malone, 833 F.2d at 131 (first two factors supported terminating sanction because, among other things, district court was prevented from adhering to its trial schedule). Plaintiffs expended a substantial amount of time and resources obtaining discovery relating to the three fraudulent declarations and the complaints submitted to the Northern District of California. As to Luong alone, plaintiffs spent at least five months attempting to depose her, and were required to file an enforcement action in the Northern District of California.[22] See supra at §§ II.A.1.c & II.A.2.

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[22] Even after full briefing on plaintiffs' initial motion for terminating sanctions, defendants continued to falsify and submit the false evidence to both this court and the Northern District of California. See supra at §§ II.A.1. & II.A.2.

Moreover, defendants' past and current violations of the court's preliminary injunction undermine the court's management of the action, as well as its overall judicial function of resolving the claims and issuing orders accordingly.[23] In short, there is "ample evidence of the time and resources spent in investigating and resolving the" litigation misconduct issues set forth above. See Leon, 464 F.3d at 958 n. 5. "As such, Defendant[s'] obstructive conduct poses a genuine threat to the expeditious resolution of this litigation and the Court's need to manage its docket." Bump Babies, 2011 WL 5037070, at *6; see PPA Prods. Liab. Litig., 460 F.3d at 1234 (explaining that court's findings regarding parties' unnecessary delay in production supported terminating sanctions).

2. **Factor 3: Risk of Prejudice to the Party Seeking Sanctions**.

Plaintiffs suffer prejudice if defendants' "actions impair [plaintiffs'] ability to go to trial or threaten to interfere with the rightful decision of the case." Anheuser-Busch, 69 F.3d at 354 (internal quotation marks and citation omitted); Kopitar v. Nationwide Mut. Ins. Co., 266 F.R.D. 493, 499 (E.D. Cal. 2010) (same). In examining this factor, courts consider whether the party's misconduct "'make it impossible for a court to be confident that the parties will ever have access to the true facts.'" Bump Babies, 2011 WL 5037070, at *6 (quoting Conn. Gen. Life Ins. Co., 482 F.3d at 1097); Bradford v. Davis, 2014 WL 37325, *2 (E.D. Cal. 2014) (same); Davidson v. Barnhardt, 2013 WL 6388354, *6 (C.D. Cal. 2013) (same).

Plaintiffs contend that they have been prejudiced as a result of defendants' bad faith conduct and stand to suffer further prejudice should the court impose anything but terminating sanctions. (See Motion at 20-21).

Defendants respond that their conduct has "not caused any prejudice to plaintiffs" because the fraudulent declarations were not actually relied on by the courts and are therefore "inconsequential[.]" (Opp'n at 12 & 19; see id. at 3 & 4). According to defendants, even though

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[23] The court notes that defendants also violated the Court's Order of July 19, 2013, which ordered Sis-Joyce to produce August Klerks, its CEO (and Alice Lin's husband), by July 29, 2013. Defendants failed to do so, requiring plaintiffs to file a motion to enforce the court's order and for sanctions. (See Plaintiffs' Motion and Joint Stipulation re Plaintiffs' Motion to Enforce the Court's July 19, 2013 Order and for Sanctions, Dkt. No. 177). On October 22, 2013, the court granted plaintiffs' motion and ordered defendants to pay $5,000 in sanctions. (See Court's Order of October 22, 2013, Dkt. No. 201, at 1).

they filed the fraudulent Chen, Win, and Luong declarations with the Ninth Circuit, they were "new evidence" that is "rarely, if ever, considered on appeal." (Id. at 3). Defendants add that they later "withdrew the declarations from the Ninth Circuit's docket[.]" (Id. at 3 & 4). Similarly, they assert that the fraudulent declarations filed in this court in support of their oppositions to plaintiffs' motion to strike their affirmative defenses and motion to dismiss counterclaims were harmless because the declarations were "extrinsic evidence [that] cannot be considered when ruling on either type of motion."[24] (Id. at 4). Defendants therefore submit that the declarations "have thus far been entirely inconsequential" because "the courts to which these declarations were submitted would not have considered them in ruling." (Id. at 12). Finally, defendants assert that plaintiffs will not be prejudiced going forward because defendants "have no intention of using these declarations and will not be relying on them in any way as this case approaches to trial." (Id. at 18).

Defendants' "no harm, no foul" argument is disingenuous and not well-taken. Clearly, in filing the fraudulent evidence with this court and the Ninth Circuit, defendants intended the courts to rely on such evidence in adjudicating the issues before them. But defendants' argument essentially posits that their fabrication and filing of material evidence cannot be found to have interfered with the rightful decision of the case or otherwise prejudiced plaintiffs, because their filings were in violation of procedural and evidentiary rules that prevented the courts from relying on the evidence. (See Opp'n at 3, 4 & 12). Defendants' position further exhibits their continued disrespect for the legal process.

The court in Sun World, Inc. v. Lizarazu Olivarria, 144 F.R.D. 384 (E.D. Cal. 1992) was presented with similar arguments in response to similar misconduct. There, the defendant

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[24] Contrary to defendants' assertion, a court may consider matters – such as the subject declarations – outside the pleadings on a motion to dismiss. A court may consider documents attached or referenced in the pleadings – as defendants did in their amended counterclaims – if the documents' authenticity is not contested and the pleading "necessarily relies" on the documents, without converting a motion to dismiss into one for summary judgment. See Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001). Also, the court could have relied on the false documents by converting plaintiffs' motion to dismiss and motion to strike into a motion for summary judgment. See Fed. R. Civ. P. 12(d) ("If, on a motion under Rule 12(b)(6) . . ., matters outside a pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment.").

submitted a fabricated document that went to material issues regarding the parties' disputed contractual agreement. See id. at 386-89. The defendant argued that the "the fraudulent document d[id] not go to the heart of th[e] case" and therefore did not warrant terminating sanctions. Id. at 391. The court flatly rejected the defendant's attempt to minimize the prejudicial effect of the defendant's fraud, stating that had the document been "genuine, [it] would have directed the outcome of this litigation. In the furtherance of this fraud [defendant] perjured himself on at least two occasions." Id. at 390. The court characterized such behavior as "reprehensible," which "mocked the authority of this court and scorned its rules." Id. The court went on to explain that

> [defendant's] mendacity has needlessly delayed this case for the purpose of furthering his strategic objectives. He has toyed with this court, interfering with its ability to promote the efficient administration of justice and causing the needless expenditure of precious and finite judicial resources. There is no sign of repentance or any indication that this pattern of behavior would cease if this case were allowed to proceed.

Id.

As in Sun World, had the subject declarations been considered – which they would have been if plaintiffs' counsel had not investigated the authenticity of the declarations – the court could have found that they established or raised a genuine issue of material fact as to defendants' defenses and counterclaims. Defendants appear to be completely indifferent to the prejudice suffered by plaintiffs, (see, generally, Opp'n), in having to expend time and resources investigating the whereabouts of a phantom declarant (Alice Win), deposing a purported declarant who testified she had never seen a declaration bearing her purported name (Jess Chen / Jessie Xu), and undertaking laborious and cost-intensive efforts to enforce the subpoena of defendants' third purported declarant (Amy Luong). See Englebrick, 944 F.Supp.2d at 912 (ruling that "[p]laintiffs' deception has already prejudiced [defendant], and it will continue to prejudice [defendant] if the Court proceeds with the trial [because it] spent enormous amounts of time and money, including retaining three experts and taking more than 30 depositions, to respond to Plaintiffs' denials").

Finally, defendants' offer to give up their right to "rely[] on the[declarations] in any way as this case approaches trial[,]" (Opp'n at 18), makes a mockery of the judicial process. As an initial matter, defendants fail to address the fact that on September 4, 2013 – only one month before making this supposed concession – Alice Lin affirmatively relied on and again filed one of the fraudulent declarations and perjured herself in furtherance of that evidence. (See Opp'n to Taking Luong's Deposition at ¶ 4 & Exh. D).

Further, a party has no right to simply abandon false evidence and promise to be honest going forward. In Aptix Corp. v. Quickturn Design Sys., Inc., 2000 WL 852813 (N.D. Cal. 2000), aff'd in part, vacated in part, 269 F.3d 1369 (Fed. Cir. 2001), a "patent holder fraudulently [sought] to strengthen a patent-in-suit through the manufacture of counterfeit evidence[,]" which was discovered during the litigation. Id. at *30. The court rejected plaintiffs' plea that they were "willing to press forward with the [patent] application date as the date of invention – that is, without the benefit of [the] fabrications." Id. The court explained that "[n]ot all frauds are detected[,] and [t]hey are not easy to detect[,]" and the "wrongdoer has no right to simply abandon the false evidence and to promise to be honest going forward." Id.; see also Henry v. Gill Indus., Inc., 983 F.2d 943, 947 (9th Cir. 1993) (rejecting party's argument that any discovery violation was "purged by his [eventually] submitting to deposition" and noting that belated compliance does not preclude sanctions) (alterations omitted). As one court stated in granting terminating sanctions based on the submission of one false declaration, "to continue this action would not deter repetition of such conduct or comparable conduct. Such a course would simply place [the offending party] back in the same position he was in, without the false declaration." Uribe, 2011 WL 3925077, at *5.

In short, the court finds that plaintiffs have been severely prejudiced by defendants' misconduct and that they would be further prejudiced by the significant costs that would be required to litigate against parties who exhibit little, if any, regard for the integrity of the judicial process.[25] "There is no doubt that [plaintiffs have] been prejudiced by [defendants'] actions.

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[25] Defendants argue that plaintiffs have unclean hands in that they have engaged in questionable business and litigation practices. (See Opp'n at 9-11). Defendants do not provide any authority, however, showing how such allegations affect the court's examination of the merits

[They] ha[ve] been forced to litigate against an opponent who . . . intentionally committed a fraud on this court, who ha[ve] perjured [themselves] on at least two occasions, who ha[ve] exercised delay tactics, [and] who ha[ve] shown complete disregard for the jurisdiction of this court[.]" Sun World, 144 F.R.D. at 391.

3. **Factor 4: Public Policy Favoring Disposition of Cases on Their Merits**.

The fourth factor, the "public policy favoring the disposition of cases on their merits[,]" "always weighs against dismissal." Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011). By itself, however, this factor is not dispositive, as the five factors are "not a series of conditions precedent" that must all be found before the imposition of terminating sanctions is warranted, but rather are "a way for a district judge to think about what to do[.]" Conn. Gen. Life Ins., 482 F.3d at 1096. Here, the public policy favoring resolution of cases on their merits does not outweigh the other factors favoring terminating sanctions.

4. **Factor 5: Availability of Less Drastic Sanctions**.

Generally, a court must consider "the impact of the sanction and the adequacy of less drastic sanctions[,]" United States v. Nat'l Med. Enters., Inc., 792 F.2d 906, 912 (9th Cir. 1986), before ordering terminating sanctions. In conducting the lesser sanctions inquiry, the court examines the following factors: (1) the feasibility of less drastic sanctions and why alternative sanctions would be inadequate; (2) whether alternative methods of sanctioning or curing the malfeasance were implemented before ordering dismissal; and (3) whether the party has been warned of the possibility of dismissal before actually ordering dismissal. See Malone, 833 F.2d at 132; Anheuser-Busch, 69 F.3d at 352; Leon, 464 F.3d at 960.

In egregious circumstances, "it is unnecessary (although still helpful) for a district court to discuss why alternatives to dismissal are infeasible." Malone, 833 F.2d at 132; Dreith v. Nu Image, Inc., 648 F.3d 779, 788-89 (9th Cir. 2011) (same); see In re Fitzsimmons, 920 F.2d 1468, 1474 (9th Cir. 1990) ("[U]nless there are egregious circumstances, the district court must, as the general rule requires, explicitly consider relative fault and alternative sanctions."). "[B]ecause bad

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of plaintiffs' Motion. (See, generally, id.).

faith behavior poses such a serious threat to the authority of a district court, the existence of bad faith constitutes egregious circumstances which can warrant dismissal even without the explicit consideration of alternative sanctions and relative fault[.]" In re Fitzsimmons, 920 F.2d at 1474; see In re Napster, Inc. Copyright Litig., 462 F.Supp.2d 1060, 1071 (N.D. Cal. 2006) ("[E]xtraordinary circumstances exist where there is a pattern of disregard for Court orders and deceptive litigation tactics that threaten to interfere with the rightful decision of a case.") (internal quotation marks and citation omitted); Englebrick, 944 F.Supp.2d at 909 (same) (collecting cases); Alexander v. Robertson, 882 F.2d 421, 424 (9th Cir. 1989) (Litigation misconduct constitutes fraud on the court when it "harms the integrity of the judicial process.") (internal quotation marks omitted); Phoceene Sous-Marine, S.A. v. U.S. Phosmarine, Inc., 682 F.2d 802, 805 (9th Cir. 1982) ("A 'fraud on the court' is 'an unconscionable plan or scheme which is designed to improperly influence the court in its decision'") (citation omitted). Otherwise, "the message to one bent on delay [and other bad faith conduct] would be: 'No matter how gross the abuse of the judicial process, your case will not be dismissed until after you have failed to comply with some alternative sanction.'" In re Fitzsimmons, 920 F.2d at 1474.

Here, the court has considered lesser sanctions, such as allowing adverse inferences against defendants and instructing the jury that the court found that defendants have falsified evidence.[26] The court finds that less drastic sanctions would not be useful here because defendants have "willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice." Anheuser-Busch, 69 F.3d at 348 (terminating sanctions are available when "a party has engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings"). Defendants' premeditated scheme to strengthen its trademark claims and defenses based on false evidence and other litigation misconduct undermines the

[26] Defendants ask the court to consider prohibiting defendants from "introducing or relying upon the three declarations in this proceeding going forward" instead of imposing terminating sanctions. (See Opp'n at 23). Defendants, however, have already stated that they would not use the three declarations. (See id. at 18) ("Defendants have no intention of using these declarations and will not be relying on them in any way as this case approaches to trial."). Thus, imposing as a sanction something defendants have already agreed to do is tantamount to imposing no sanction at all.

integrity of the court. Thus, defendants' contention that, "[i]n lieu of imposing such drastic [terminating] sanctions . . . this Court should instead allow this case to be properly decided on its merits[,]" (Opp'n at 12), is untenable. Defendants' misconduct was intentional, calculated, and in bad faith. What's more, even after being put on notice of the false declarations and other related misconduct through the filing of plaintiffs' first motion for terminating sanctions, defendants persisted in continuing their ongoing misconduct. See supra at § II.A.2.

In addition, defendants filed the false declarations with the Ninth Circuit and submitted the false complaints to the Northern District of California before this court had any opportunity to order "lesser sanctions." See Leon, 464 F.3d at 960 ("The second [Anheuser-Busch] criterion is inapplicable here because [the party] erased the files and ran the wiping program before the district court had an opportunity to compel discovery or otherwise order 'lesser sanctions.'"). Defendants' obstructive misconduct has severely damaged the integrity of this litigation, and the court seriously doubts whether alternative sanctions will deter defendants from further misconduct. See Conn. Gen. Life Ins. Co., 482 F.3d at 1097 ("It is appropriate to reject lesser sanctions where the court anticipates continued deceptive conduct."). A party may not grossly abuse the judicial process and then expect to be allowed to litigate the merits of their case until they have exhausted graduated sanctions. See In re Fitzsimmons, 920 F.2d at 1474 (declining to impose lesser sanctions because it would convey the message, "[n]o matter how gross the abuse of the judicial process, your case will not be dismissed until after you have failed to comply with some alternative sanction"). Defendants' egregious and persistent misconduct stripped them of the privilege of litigating the merits of their counterclaims and defenses. See Arnold v. Cnty. of El Dorado, 2012 WL 3276979, *4 (E.D. Cal. 2012) ("[P]erjury on any material fact strikes at the core of the judicial function and warrants a dismissal of one's right to participate at all in the truth seeking process."); Nat'l Corporate Tax Credit Funds, 2010 WL 457626, at *10 ("Defendants have engaged in dilatory tactics intended to frustrate the resolution of this case[,]" such that "alternative sanctions do not weigh against terminating sanctions in this case.").

With respect to the third Anheuser-Busch factor, defendants contend that terminating sanctions are inappropriate because they have not "been warned that these declarations or any

failure to comply with discovery could lead [to] the sanction of dismissal and default." (Opp'n at 13). As with the second criterion, this criterion is inapplicable because defendants filed and submitted the false declarations and false complaints to the Ninth Circuit and Northern District of California before this court had an opportunity to warn defendants. See Leon, 464 F.3d at 960 ("Likewise, the third criterion, which examines whether the district court warned the party, is inapplicable here because the destruction of the evidence occurred before the court had any opportunity to warn [the party].").

In any event, the nature of defendants' misconduct is so egregious and antithetical to the integrity of the judicial system that no warning of lesser sanctions is required. See Nat'l Corporate Tax Credit Funds , 2010 WL 457626, at *10 ("While a failure to warn has been a contributing factor in Ninth Circuit decisions to reverse grants of terminating sanctions, warnings are not required in egregious circumstances.") (internal quotation marks and citation omitted). A court should not have to warn a party to refrain from inventing phantom witnesses (Alice Win), forging declarations (Jess Chen / Jessie Xu), falsifying and fraudulently procuring declarations (Amy Huong), filing false declarations with various federal courts, obstructing the discovery process by filing fraudulently procured complaints, and lying under oath. As the court in Sun World, Inc. explained, the courts "need not order [a party] to refrain from submitting false documents or perjuring himself in order for those acts to be punishable by dismissal and the entry of default judgment. The legal obligation to refrain from committing such acts is imposed upon every party to a lawsuit." 144 F.R.D. at 389-90; see also Garcia, 569 F.3d at 1180 (explaining that although party did not receive an "explicit warning that dismissal would be a likely sanction for fabricating evidence," and submitting false responses to discovery, such a warning was not a "prerequisite[,]" since "additional warnings [would have been] superfluous at best") (internal quotation marks and citation omitted).

Finally, it should be noted that defendants did receive notice of the possibility of terminating sanctions in the form of plaintiffs' first motion for terminating sanctions, which was filed on May 31, 2013. See Nat'l Corporate Tax Credit Funds, 2010 WL 457626, at *10 (Plaintiffs "warned defense counsel during a meet and confer that Plaintiffs planned on filing a motion for terminating

sanctions if Defendants did not appear for depositions and otherwise comply with the court-ordered discovery[,] . . . and earlier [filed a] Motion for Leave to File Motion for Terminating Sanctions . . . , which surely placed Defendants on notice of the possibility of terminating sanctions."). Defendants failed to heed that warning, and instead continued to pursue their scheme to prevent Luong from appearing at her deposition, see supra at § II.A.1.c., and thereafter, on September 4, 2013, filed the fraudulently procured Luong declaration and the fraudulent Luong July 18, and August 9, 2013, complaints with this court. (See Opp'n to Taking Luong Deposition). In short, the court finds it was unnecessary to warn defendants of the possibility of terminating sanctions given the egregiousness of the misconduct, some of which occurred before the court even had a chance to warn defendants, and because defendants' conduct after plaintiffs filed the Prior Motion suggest that defendants would have failed to heed such a warning. See Leon, 464 F.3d at 960 (party's misconduct occurred before the court had any opportunity to warn); CFTC v. Noble Metals Int'l, Inc., 67 F.3d 766, 771 (9th Cir. 1995), cert. denied 519 U.S. 815 (1996) (affirming dispositive sanctions despite lack of prior warning because parties "could not have been surprised by the severity of the sanction").

Under the circumstances, the court is persuaded that alternative, lesser sanctions are futile. The court has no confidence that it can accept defendants' account of either the law or the facts in this matter. See Newman, 2012 WL 4933478, at *4 (submission of perjured testimony going to material issues in the case "was an act of bad faith which undermines the confidence placed in our system of justice"); Da-Silva, 2013 WL 2558302, at *4 (less severe sanction is not appropriate when party "callously deceived the court, the defendant, her doctors, and her own attorney," and it would be "unlikely" that a trier of fact would believe party's testimony). There is nothing before the court indicating that defendants would now rectify their litigation conduct even if the court were to impose something less than terminating sanctions. See Conn. Gen. Life Ins. Co., 482 F.3d at 1097 ("It is appropriate to reject lesser sanctions where the court anticipates continued deceptive conduct."). Further, the court is persuaded that lesser sanctions would not deter defendants' repetition of misconduct; lesser sanctions would simply place defendants back in the same position they were in prior to submitting the false declarations and false complaints.

See Uribe, 2011 WL 3925077, at *5 ("[T]o continue this action would not deter repetition of such conduct or comparable conduct. Such a course would simply place [party] back in the same position he was in, without the false declaration.").

5. **Summary of the Five-Factor Test**.

Four of the five Anheuser-Busch factors support the imposition of terminating sanctions. The prejudice to plaintiffs and the futility of lesser sanctions weigh heavily in favor of terminating sanctions. Likewise, the need to manage the court's docket, as well as the public interest in the expeditious resolution of litigation, weigh in favor of terminating sanctions. See Leon, 464 F.3d at 960. "The only factor weighing against dismissal is the public policy favoring disposition of cases on their merits, which standing alone, is not sufficient to outweigh the other four factors." Id. at 960-61 (internal quotation marks omitted). Additionally, the court's bad faith determination, see supra at § II.B., supports the imposition of terminating sanctions. In short, the court's examination of the record and analysis of the five-prong test conclusively establish that defendants' conduct poses too great a risk that they will continue to undermine the judicial process and interfere with the appropriate merits-based decision in this case. See Anheuser–Busch, 69 F.3d at 352 (Terminating sanction is appropriate where a "pattern of deception and discovery abuse ma[kes] it impossible" for a district court to conduct a trial "with any reasonable assurance that the truth would be available."); see also Conn. Gen. Life Ins. Co., 482 F.3d at 1097 ("In deciding whether to impose case-dispositive sanctions, the most critical factor is not merely delay or docket management concerns, but truth.")

Defendants assert a due process argument premised on the notion that "the wrongdoing in the instant case was both peripheral and confined to one finite issue." (Opp'n at 16). According to defendants, the "declarations at issue are entirely irrelevant to the vast majority of the case[,]" since plaintiffs assert other causes of actions in addition to trademark infringement. (Id. at 15). Defendants' assertions are plainly without merit.

The crux of plaintiffs' suit concerns trademark infringement. (See, generally, FAC). Defendants' main defense in this case is the claimed priority of the ARëna mark, and their affirmative counterclaims rest on this same claim. (See Amended Answer & Counterclaims at ¶

11 (alleging that Lin started using the mark ARëna in 1999, or seven years before plaintiffs began to use the disputed marks in June 2006); see also id. at ¶¶ 31-42, 50-56 & 61-66 (alleging counterclaims of statutory and common law trademark infringement, trademark cancellation, and trademark libel)). There is an undeniably close nexus between the subject-matter of the false declarations (i.e., prior use of the ARëna marks) and the core trademark claims and defenses in this action (i.e., priority of RENA versus ARëna), which strongly supports the imposition of terminating sanctions. Indeed, in arguing against the evidentiary sanctions plaintiffs seek – i.e., an order "conclusively establish[ing]" that plaintiffs' trademarks have priority or a preclusion order preventing defendants from introducing any evidence of Arena marks prior to plaintiffs' marks, (see Motion at 23) – defendants assert that such sanctions would result in a "complete foreclosure of Defendants' case."[27] (Opp'n at 23). In short, there are no due process concerns with the imposition of terminating sanctions because there is a "close nexus" between the sanctioned conduct and the merits of the case. See Anheuser-Busch, 69 F.3d at 348 (Due process requires "that there exist a relationship between the sanctioned party's misconduct and the matters in controversy such that the transgression threatens to interfere with the rightful decision of the case.") (internal quotation marks omitted).

Defendants also argue that they should be permitted to litigate the merits of this action because they have other evidence that proves their claims and defenses as to the alleged trademark violations. (See Opp'n at 11-12). This is simply an iteration of their "no harm, no foul" argument, in which defendants ask the court to ignore their egregious bad faith conduct because they have legitimate grounds upon which to proceed. But as the Ninth Circuit has explained, "[w]here a litigant is substantially motivated by vindictiveness, obduracy, or mala fides, the assertion of a colorable claim will not bar the assessment of" terminating sanctions under the

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[27] Defendants give shifting and conflicting explanations with respect to the significance of the false declarations. On the one hand, defendants claim that the wrongdoing in this case – i.e., the filing of the false declarations – was "peripheral" and "confined to one finite issue." (Opp'n at 16). On the other hand, defendants assert that the evidentiary sanctions plaintiffs seek based on the false declarations – i.e., supporting defendants' first use defense – would result in a "complete foreclosure of Defendants' case." (Id. at 23). More recently, defendants claim that the three declarations "are of no use to them." (Def'ts Second Fees Suppl. Opp'n at 17).

court's inherent power. B.K.B. v. Maui Police Dep't, 276 F.3d 1091, 1108 (9th Cir. 2002). "To permit the fabrication of spurious corroborating evidence without the imposition of a harsh responsive sanction would constitute an open invitation to abuse of the judicial system of the most egregious kind." Asia Pac. Agr. & Forestry Co. v. Sester Farms, 2013 WL 4742934, *11 (D. Or. 2013); see also Arnold, 2012 WL 3276979, at *4 ("[P]erjury on any material fact strikes at the core of the judicial function and warrants a dismissal of one's right to participate at all in the truth seeking process."); id. ("Perjury is much more than simply a 'gotcha,' harmful in effect only for the reason that one got caught. . . . If one can be punished for perjury with up to five years imprisonment, 18 U.S.C. § 1621, it should not seem out of place that a civil action might be dismissed for the same conduct.").

In short, the court concludes that the evidence is clear and convincing that defendants fabricated evidence, obstructed the discovery process and administration of justice, submitted false evidence to this court and the Ninth Circuit, and violated the court's preliminary injunction. See supra at § II. Defendants' bad faith conduct "covers the 'full range of litigation abuses.'" Vargas v. Peltz, 901 F.Supp.1572, 1581-82 (S.D. Fla. 1995). The court has no confidence that defendants would move forward in this litigation in good faith, and it will not allow plaintiffs' and the court's extremely limited resources to be further wasted when defendants have consistently engaged in such egregious misconduct. The court therefore concludes that defendants' misconduct warrants no less than terminating sanctions, and will grant plaintiffs' default judgment, dismiss defendants' counterclaims, and strike their answers and defenses.

III. MONETARY SANCTIONS.

Having found that defendants' conduct was in bad faith and that the imposition of terminating sanctions is appropriate, see supra at § II.B.-C., the court now turns to plaintiffs' request for attorney's fees and costs. See Haeger, 793 F.3d at 1135 ("Once a district court makes a finding of bad faith, it has the discretion to award sanctions in the form of attorneys' fees against a party or counsel.") (internal quotation marks omitted). However, before addressing the merits of plaintiffs' request for attorney's fees and costs, the court notes that defendants' briefing failed to comply with the Court's Order of December 13, 2013. At the December 12, 2013, hearing, the

court explained that "the issue[s] on plaintiffs' Motion are thoroughly briefed[,]" and the parties' "papers are substantial." (Transcript of Proceedings, December 12, 2013, at 3 & 6). The court ordered additional briefing, however, only as to the narrow issue of attorney's fees and costs as a sanction. (See id. at 5 & 7). The court did this because plaintiffs, in their Motion, requested leave to file an application for an award of attorney's fees and costs pursuant to the court's inherent power and 28 U.S.C. § 1927. (See Motion at 24-25). The court explained at the hearing that plaintiffs' request for fees was, in essence, "part of the same Motion[,]" and therefore, rather than grant plaintiffs leave to file a separate motion or application, the court would treat that request as part of same motion and rule on "all the requested sanctions together" after receiving supplemental briefs on those issues. (Transcript of Proceedings, December 12, 2013, at 5). Accordingly, on December 13, 2013, the court issued an order directing plaintiffs to submit a supplemental memorandum addressing "(1) the authority(ies) under which the fees and costs are sought; (2) the amount of fees and costs sought by plaintiffs and the reasonableness of the requested amounts; and (3) whether the fees and costs should be assessed against defendants and/or counsel." (Court's Order of December 13, 2013).

Rather than address the merits of plaintiffs' request for attorney's fees and costs, defendants – who by this time again had new counsel – took it as an opportunity to present new arguments and evidence relating to whether sanctions should be imposed in the first place.[28] (See, e.g., Def'ts First Fees Suppl. Opp'n at 8-9 (relying on new declaration of Howard Huang to support claim that the Alice Win declaration is not false because defendants recently spoke to Alice Win by telephone in Beijing); Def'ts Second Fees Suppl. Opp'n at 7-9 (similar)). The court is not obligated to give parties and their counsel several opportunities to raise facts and legal arguments that could have been asserted earlier. The papers filed with this court are not first drafts, subject to revision and resubmission at the litigant's pleasure. In short, the court will

[28] Defendants could have raised all the arguments and evidence they wished in their oppositions to the Prior Motion and Motion. In contrast, InHouse was not retained when the Prior Motion was briefed. In its brief opposing plaintiffs' attorney's fees and costs, InHouse necessarily had to address some of the merits of InHouse's own conduct.

disregard any arguments and evidence in defendants' supplemental papers relating to attorney's fees that are merely a rehash or attempt to re-frame arguments that were either presented or could or should have been presented in defendants' earlier submissions.[29]

Even though the purpose of the supplemental briefing was to address plaintiffs' request for fees and costs, defendants' new counsel provided a disservice to their clients by, inexplicably, making no attempt to challenge the reasonableness of plaintiffs' fees or hourly rates.[30] For example, defendants' new counsel did not specifically identify any particular time entries they believed should not be compensated.[31] (See, generally, Def'ts Second Fees Suppl. Opp'n). Defendants' new counsel's failure to provide any specific basis or challenge to plaintiffs' counsel's hours means that no reduction to plaintiffs' fees or costs may be appropriate. See Gates v.

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[29] Defendants submitted new evidence in the form of the declarations of Stephen Johnson and Howard Huang. (See Declaration of Howard Huang, Dkt. No. 255-3; Declaration of Stephen Johnson, Dkt. No. 255-1). The court has considered plaintiffs' evidentiary objections and defendants' responses to the objections to these declarations. (See Evidentiary Objections to Evidence Proffered by Defendants and InHouse in Opposition to Request for Fees and Costs in Renewed Motion for Full Terminating and Other Sanctions ("Plffs' Fees Evid. Objs.," Dkt. No. 261-2); Reply to Plaintiffs' Objections to the Declaration of Stephen C. Johnson and Howard Huang ("Def'ts Fees Reply to Evid. Objs.," Dkt. No. 264)). The court sustains all of plaintiffs' objections and strikes paragraphs 4 to 18 of the declaration of Stephen Johnson on the grounds that the statements constitute inadmissible hearsay, lack foundation, and are irrelevant. The court also strikes paragraphs 2 and 4-14 of the declaration of Howard Huang on the grounds that the statements constitute inadmissible hearsay, lack foundation and are irrelevant.

[30] Although defendants' opposition to attorney's fees and costs includes a section heading entitled, "The Amount Requested by Quinn Emanuel is Absurd; it finds no support in the facts or the law," (Def'ts Second Fees Suppl. Opp'n at 13), that section, which is only four paragraphs long, makes no effort to address the reasonableness of the requested fees, costs or hourly rates. (See, generally, id. at 13-14).

[31] Although defendants do not challenge the reasonableness of plaintiffs' proposed fees, InHouse does, and includes the declaration of an attorney's fees expert, Edward O. Lear. (See InHouse's Fees Opp'n at 24-25; Declaration of Edward O. Lear ("Lear Decl.," Dkt. No. 256-4)). Given the court's conclusion below that sanctions are not warranted against InHouse or Kamarei, see infra at § III.A., it is unclear whether the court can or should consider InHouse's fee expert's declaration in assessing the reasonableness of fees requested by plaintiffs solely against defendants. In any event, the court will review the Lear declaration in assessing the reasonableness of plaintiffs' request for monetary sanctions against defendants, even though defendants did not assert any specific challenges (or even incorporate by reference Lear's declaration).

Rowland, 39 F.3d 1439, 1449 (9th Cir. 1994) (fee opponents failed to meet their burden rebutting with specificity any charges that were excessive or duplicative); Columbia Pictures Television v. Krypton Broad. of Birmingham, Inc., 106 F.3d 284, 296-97 (9th Cir. 1997), rev'd on other grounds, 523 U.S. 340 (1998) (rejecting argument that certain hours should have been excluded, because no specific objection was raised in district court); see also Smith v. Rogers Galvanizing, 148 F.3d 1196, 1199 (10th Cir. 1998) (district court did not abuse discretion in refusing to reduce hours as to which fee opponent made no specific objection); Sheets v. Salt Lake City, 45 F.3d 1383, 1391 (10th Cir. 1995) (fee opponent who argued merely that fee request was exorbitant and duplicative failed to carry burden of opposing fee, and waived issue for purposes of appeal).

Plaintiffs request $1,363,728.88 in attorney's fees and costs. (See Suppl. Fees Motion at 17; Declaration of Bruce Van Dalsem ("Van Dalsem Decl.," Dkt. Nos. 243-1 to 243-11) at ¶ 7). This amount reflects 75% of plaintiffs' total fees and costs that are attributable to defendants' misconduct. (See id.; Suppl. Fees Motion at 17 & 22). Plaintiffs also ask the court to impose, pursuant to the court's inherent power and 28 U.S.C. § 1927,[32] $396,994.14 of the above-referenced amount jointly and severally against InHouse and Ali Kamarei, a partner at InHouse. (See Suppl. Fees Motion at 1 & 13-16).

A. Ali Kamarei and InHouse Co. Law Firm.

Under its inherent powers, a court may award sanctions in the form of attorney's fees against an attorney who acts "in bad faith, vexatiously, wantonly, or for oppressive reasons." Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 648 (9th Cir. 1997). In order to invoke its inherent power, the court must make an explicit finding of bad faith. See Mendez v. Cnty. of San Bernardino, 540 F.3d 1109, 1131 (9th Cir. 2008), overruled on other grounds Ariz. v. ASARCO, LLC, 773 F.3d 1050 (9th Cir. 2014); Fink v. Gomez, 239 F.3d 989, 992 (9th Cir. 2001) ("In reviewing sanctions under the court's inherent power, our cases have consistently focused on bad faith."). Bad faith is found where an attorney "knowingly or recklessly raises a frivolous argument, or argues a meritorious claim for the purpose of harassing an opponent." Primus Auto. Fin.

[32] Further references to 28 U.S.C. § 1927 will be to "§ 1927."

Servs., 115 F.3d at 649; Walsh v. Frederick J. Hanna & Assocs., P.C., 2011 WL 537854, *1 (E.D. Cal. 2011) (same); see also Fink, 239 F.3d at 992 (bad faith includes a broad range of improper conduct, including actions that are not frivolous, yet are "substantially motivated by vindictiveness, obduracy, or mala fides").

Pursuant to § 1927, "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."[33] See Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc., 210 F.3d 1112, 1117 (9th Cir. 2000) ("Section 1927 authorizes the imposition of sanctions against any lawyer who wrongfully proliferates litigation proceedings once a case has commenced."). Section 1927 is "concerned only with limiting the abuse of court processes" and is "indifferent to the equities of a dispute and to the values advanced by the substantive law." Roadway Express, Inc. v. Piper, 447 U.S. 752, 762, 100 S.Ct. 2455, 2462 (1980); accord T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 638 (9th Cir. 1987). Sanctions under § 1927 may be imposed when: (1) the attorney unreasonably multiplied the proceedings; (2) the attorney's conduct was unreasonable and vexatious; and (3) the conduct caused an increase in the cost of the proceedings. 28 U.S.C. § 1927; B.K.B. v. Maui Police Dep't, 276 F.3d 1091, 1107 (9th Cir. 2002), as amended Feb. 20, 2002). While a finding of bad faith is required for the imposition of sanctions pursuant to the court's inherent power, "recklessness suffices for § 1927." Fink, 239 F.3d at 993; accord B.K.B., 276 F.3d at 1107.

The court has already made a finding that defendants' misconduct was willful and in bad and subject to terminating sanctions. See supra at § II.B.-C. Before addressing the reasonableness of plaintiffs' monetary sanctions request, the court must determine whether InHouse and/or Kamarei's conduct was in bad faith and/or reckless (for Kamarei only as to 28

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[33] Title "28 U.S.C. § 1927 does not permit the award of sanctions against a law firm." Kaass Law v. Wells Fargo Bank, 799 F.3d 1290, 1291 (9th Cir. 2015). Therefore, plaintiffs' request for sanctions against the InHouse law firm under § 1927 is denied. However, the court must still determine whether sanctions are warranted against InHouse under the court's inherent power.

U.S.C. § 1927), in order to hold them jointly and severally liable for a portion of the monetary sanctions.

Plaintiffs allege that InHouse and Kamarei acted in bad faith by: (1) recklessly or knowingly misstating facts and law with an improper purpose, (see Fees Reply at 9); (2) recklessly or knowingly putting forth frivolous arguments, (see id.); (3) violating counsel's duty of candor, (see id. at 10); and (4) obstructing discovery. (See id.).

1. **Misstating Facts and Law with an Improper Purpose**.

Plaintiffs assert that InHouse and Kamarei knowingly relied on evidence that they knew was false, namely the Chen, Win, and Luong declarations. (See Suppl. Fees Motion at 5). Plaintiffs contend that InHouse and Kamarei prepared or failed to amend two documents, which relied on the three declarations. First, during the time InHouse and Kamarei were retained by Sis-Joyce, Sis-Joyce submitted supplemental responses to interrogatories in October 2013, which identified Jess Chen, Amy Luong, and Alice Win as individuals who had knowledge that defendants "first used the ARëna marks in the United States prior to Rena's use of the Rena marks." (Keech Reply Decl., Exh. G at 22). Second, plaintiffs point out that defendants' operative answer, to this day, alleges an affirmative defense that specifically references the three declarations. (See Amended Answer and Counterclaims at p. 36).

In response, InHouse and Kamarei assert that they began representing defendants in September 2013, and "made an attempt to quickly and efficiently get the case back on track" when preparing the supplemental discovery responses. (Declaration of Ali Kamarei ("Kamarei Decl.," Dkt. Nos. 256-1 & 256-2) at ¶ 2). According to InHouse and Kamarei, "[t]he residual reference to the three declarations in the affirmative defense of justification and privilege was inadvertent." (Id. at ¶ 8).

Given that plaintiffs filed their Prior Motion in May 2013, InHouse and Kamarei should have been aware that the Chen, Win, and Luong declarations may have been false. On the other hand, the efforts required to get up to speed on the instant action midstream may have been considerable. InHouse and Kamarei were retained in September 2013, only a month after defendants served the supplemental responses, and the amended answer and counterclaims

were prepared and filed by prior counsel. Although it is a close call, the court is persuaded that while the "evidence in the record . . . certainly shows ignorance or negligence on the part of [InHouse and Kamarei], [it] does not compel a finding that [they were] reckless or acted in bad faith." Barber v. Miller, 146 F.3d 707, 711 (9th Cir. 1998); see In re Girardi, 611 F.3d 1027, 1038 n. 4 (9th Cir. 2010) ("'Recklessness' of course, may have different meanings in different contexts. . . . In the instant context, recklessness might be defined as a departure from ordinary standards of care that disregards a known or obvious risk of material misrepresentation.").

Finally, even if the court had found that Kamarei's conduct rose to the level of recklessness, see 28 U.S.C. § 1927, plaintiffs have not established how the supplemental responses multiplied the proceedings. (See, generally, Suppl. Fees Motion; Fees Reply); see In re Keegan Mgmt. Co., Sec. Litig., 78 F.3d 431, 435 (9th Cir. 1996) ("[S]ection [1927] authorizes sanctions only for the multiplication of proceedings, [and] applies only to unnecessary filings and tactics once a lawsuit has begun.") (emphasis added) (internal citations and alterations omitted).

2. **Putting Forth Frivolous Arguments and Violating Counsel's Duty of Candor**.

Plaintiffs claim that InHouse's and Kamarei's argument regarding Alice Lin's role preparing the Luong declaration was disingenuous and violated their duty of candor. (See Suppl. Fees Motion at 3-5). InHouse's and Kamarei's argument distinguishing Alice Win's "drafting," i.e., forming the substance of the Win, Chen, and Luong declarations from "writing" them, i.e., physically transcribing the documents, (see InHouse's Fees Opp'n at 8-10), is weak and unpersuasive. Although this is an even closer call than the issue discussed in the previous section, it does not appear to rise to the level of bad faith or recklessness. See, e.g., In re Girardi, 611 F.3d at 1062 ("[I]n the contexts of § 1927, frivolousness should be understood as referring to legal or factual contentions so weak as to constitute objective evidence of improper purpose."). While InHouse's and Kamarei's argument relating to the "drafting" of declarations clearly strains credulity, the court cannot say that the argument was reckless or in bad faith.

3. **Obstructing Discovery**.

Plaintiffs also contend that the conduct of Kamarei at Alice Lin's October 2013, deposition

constituted an obstruction of the discovery process. (See Suppl. Fees Motion at 8-9; Fees Reply at 15-16). For example, shortly after the commencement of Alice Lin's deposition, Kamarei tried to limit the deposition to 59 minutes. (See Alice Lin Oct. 2013, Dep. at 173). Kamarei made repeated and lengthy speaking objections, (see Fees Reply at 8) (citing examples), which Kamarei insisted the interpreter translate into Mandarin for his client's benefit. (See Alice Lin Oct. 2013, Dep. at 179 (Proctor: "So you're insisting that your client have translated for her your speaking objections?" Kamarei: "She has to translate all my objections, including every discussion that occurs.")).

Again, this is a close call. While Kamarei's deposition conduct is arguably sanctionable under Rule 37 of the Federal Rules of Civil Procedure, plaintiffs did not raise that as basis for the imposition of sanctions. The court is persuaded that Kamarei's deposition conduct – though unprofessional and likely sanctionable under Rule 37 – did not "rise to the level of bad faith, harassment, or obduracy sufficient to impose sanctions under either § 1927 or the court's inherent authority." Cardroom Int'l LLC v. Scheinberg, 2012 WL 2263330, *9 (C.D. Cal. 2012).

Finally, plaintiffs assert that InHouse and Kamarei violated the court's orders and local rules. (See Suppl. Fees Motion at 9-11). Having reviewed plaintiffs' contentions with respect to InHouse's and Kamarei's multiple failures to comply with the court's orders and local rules, (see id.), the court is persuaded that InHouse's and Kamarei's conduct – while possibly sanctionable on other grounds – again does not "rise to the level of bad faith, harassment, or obduracy sufficient to impose sanctions under either § 1927 or the court's inherent authority." Cardroom Int'l LLC, 2012 WL 2263330, at *9.

In short, while defendants' egregious misconduct discussed above was willful and made in bad faith, the court cannot clearly conclude that InHouse's or Kamarei's conduct was reckless or in bad faith. In other words, the court is not persuaded that sanctions are warranted against InHouse or Kamarei under either the court's inherent power or, as applied to Kamarei. 28 U.S.C. § 1927. Accordingly, monetary sanctions will be imposed only against defendants and not their counsel. See, e.g., Revolution Eyewear, Inc. v. Aspex Eyewear, Inc., 2009 WL 2898824, *2 (C.D. Cal. 2009) ("Based on all the evidence before it, the Court is persuaded Plaintiff acted at least in

part out of obduracy . . . [n]evertheless, its counsel's motivations were such that the Court cannot conclude he was 'substantially motivated' by obduracy, vindictiveness, or mala fides.").

B. Computation of Monetary Sanctions.

Having concluded that terminating sanctions are warranted and that defendants acted in bad faith, see supra at § II.; Leon, 464 F.3d at 961, the court now turns to the amount of monetary sanctions that will be imposed against defendants. (See Suppl. Fees Motion at 24).

Before addressing the specifics of plaintiffs' request for fees and costs, the court believes it is necessary to address a few threshold matters. First, as noted earlier, defendants' new counsel did not assert any specific challenge or objection to the hourly rate or number of hours requested by plaintiffs. See supra at § III. The court, however, will consider the declaration of InHouse's fee expert, Edward Lear, submitted in conjunction with InHouse's opposition to plaintiffs' motion for attorney's fees. The court will consider the Lear Declaration – subject to plaintiffs' evidentiary objections[34] – in conducting its own independent review of the attorney's fees and costs at issue. See Gates v. Deukmejian, 987 F.2d 1392, 1401 (9th Cir. 1992) (court has duty "to independently review plaintiffs' fee request even absent defense objections"). In referring or addressing objections to plaintiffs' fee request raised by InHouse, the court will refer – throughout the remainder of this order – to InHouse and defendants interchangeably.

Second, defendants assert that "any sanctions awarded should directly reflect fees incurred with respect to specific misconduct." (InHouse's Fees Opp'n at 24). Defendants' assertion is unpersuasive.

In Haeger, after the parties settled a case concerning allegedly defective tires, plaintiffs discovered that defendant Goodyear Tire & Rubber Company ("Goodyear") withheld documents relating to the testing of the tires. See 793 F.3d at 1129-31. "[R]elying upon its inherent power,

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[34] The court has reviewed plaintiffs objections and InHouse's response, (see Plffs' Fees Evid. Objs.; Responding Attorneys' Response to Plaintiffs' Evidentiary Objections to the Declarations of Ali Kamarei and Edward Lear ("Def'ts Fees Evid. Objs.," Dkt. No. 266), and hereby overrules plaintiffs' objections to paragraphs 2-3 in their entirety and sustains plaintiffs' objections to paragraphs 4-11 and exhibits 2-3 in their entirety on the grounds that they contain improper legal opinion. The court further sustains plaintiffs' objections to paragraphs 12-17 and exhibits 4-5 to the extent they contain improper legal opinion.

the district court determined that the most appropriate sanction for 'remedying a years-long course of misconduct' would be 'to award Plaintiffs all of the attorneys' fees and costs they incurred after Goodyear served its supplemental responses to Plaintiffs' First Request.'" Id. at 1130 (emphasis in original). On appeal, Goodyear challenged the sanctions amount, claiming that it must be directly linked to its bad faith conduct. See id. at 1136.

The Ninth Circuit "consider[ed] how close a link is required between the harm caused and the compensatory sanctions awarded when a court invokes its inherent power." Haeger, 793 F.3d at 1137. The Ninth Circuit stated that the linkage question "is squarely answered by Chambers v. NASCO, Inc." Id. In particular, the Ninth Circuit stated that the Supreme Court's Chambers decision "expressly rejected the linkage argument made by [Goodyear] here when it upheld the award for full attorney's fees 'due to the frequency and severity of Chambers's abuses of the judicial system and the resulting need to ensure that such abuses were not repeated.'" Id. at 1138 (quoting Chambers, 501 U.S. at 56, 111 S.Ct. at 2139). According to the Haeger court, the Chambers decision "made clear" that a district judge's "determinations in arriving at the proper measure of compensatory damages [is reviewed] for abuse of discretion." Id. The Ninth Circuit upheld the district judge's decision to award plaintiffs $2,741,201.16 for their attorney's fees and costs against Goodyear and their counsel. See id. at 1125-26 & 1141.

The Haeger court quoted extensively from the Chambers decision, see Haeger, 793 F.3d at 1137-38, and noted why and under what circumstances, full attorney's fees were warranted:

> The Supreme Court further explained [in Chambers] that it was within the district court's discretion to "compensate NASCO by requiring Chambers to pay for all attorney's fees." The Supreme Court reasoned that the district court "imposed sanctions for the fraud [Chambers] perpetrated on the court and the bad faith he displayed toward both his adversary and the court throughout the course of litigation." And, such sanctions both "vindicat[e] judicial authority without resort to the more drastic sanctions available for contempt of court and mak[e] the prevailing party whole for expenses caused by his opponent's obstinacy."

Id. at 1137-38 (citations to Chambers decision omitted and all brackets in original except for first set of brackets).

The conduct in this case is arguably more egregious than the conduct in Haeger. Whereas in Haeger, Goodyear withheld clearly relevant evidence that may or may not have impacted the merits of the case and ultimate settlement, see 793 F.3d at 1130 ("The court also noted that while it would be impossible to determine how the litigation would have proceeded if Goodyear had made the proper disclosures, the case more likely than not would have settled much earlier, and, the Haegers believe, for considerably more money."), in this case, defendants fabricated evidence, filed the false evidence with three different federal courts, filed false complaints with the Northern District of California, suborned perjury, misled and/or tricked a third-party witness into signing a declaration that was false, and violated (and continue to violate) the preliminary injunction. See supra at § II. Here, the frequency and severity of defendants' pattern of bad faith conduct displayed toward plaintiffs and three different federal courts, and the resulting need to ensure that such abuses are not repeated, see Chambers, 501 U.S. at 56, 111 S.Ct. at 2139, clearly warrant the imposition of the entirety of plaintiffs' attorney's fees and costs in this case – not just those fees tied to defendants' misconduct. Nevertheless, plaintiffs seek only 75% of the total attorney's fees incurred in this case. (See Suppl. Fees Motion at 3).

1. **Applicable Law**.

Fee awards are calculated using the "lodestar" method, which is obtained by multiplying the number of hours reasonably expended on litigation by a reasonable hourly rate. See Perdue v. Kenny A. ex rel. Winn, 559 U.S. 542, 551, 130 S.Ct. 1662, 1672 (2010) ("the lodestar figure has, as its name suggests, become the guiding light of our fee-shifting jurisprudence") (internal citations omitted). "[T]here is a 'strong presumption' that the lodestar figure is reasonable. See id. at 554, 130 S.Ct. at 1673. This strong presumption, however, "may be overcome in those rare circumstances in which the lodestar does not adequately take into account a factor that may properly be considered in determining a reasonable fee." Id.; Moreno v. City of Sacramento, 534 F.3d 1106, 1111 (9th Cir. 2008) (after computing the lodestar figure, the "district court may then adjust upward or downward based on a variety of factors."). These factors include: (1) the time

and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See Kerr v. Screen Guild Extras, Inc., 526 F.2d 67, 70 (9th Cir.1975); Gonzalez, 729 F.3d at 1209 n. 11

Ultimately, a "reasonable" number of hours equals "[t]he number of hours ... [which] could reasonably have been billed to a private client." Moreno, 534 F.3d at 1111. The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours for which it seeks payment. See Gates, 987 F.2d at 1397 (1992) ("The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked.").

2. **Reasonableness of Requested Billing Rates**.

In addition to computing a reasonable number of hours, the district court must determine a reasonable hourly rate to use for attorneys and paralegals in computing the lodestar amount. Ballen v. City of Redmond, 466 F.3d 736, 746 (9th Cir. 2006); Welch v. Metro. Life Ins. Co., 480 F.3d 942, 946 (9th Cir. 2007) ("[B]illing rates should be established by reference to the fees that private attorneys of an ability and reputation comparable to that of prevailing counsel charge their paying clients for legal work of similar complexity.") (internal quotation marks omitted). "Generally, when determining a reasonable hourly rate, the relevant community is the forum in which the district court sits." Prison Legal News v. Schwarzenegger, 608 F.3d 446, 454 (9th Cir.2010) (internal quotation marks and citation omitted); Jordan v. Multnomah Cnty., 815 F.2d 1258, 1262 (9th Cir. 1987) ("The prevailing market rate in the community is indicative of a reasonable hourly rate."). "Within this geographic community, the district court should "tak[e] into consideration the experience, skill, and reputation of the attorney." Dang v. Cross, 422 F.3d 800, 813 (9th Cir. 2005) (internal quotation marks and citations omitted). The fee applicant has the burden of producing

"satisfactory evidence" that the rates he requests meet these standards. See id. at 814.

Defendants do not challenge the reasonableness of the hourly rates requested by plaintiffs' counsel. (See, generally, InHouse Fee. Opp'n; Def'ts Second Fees Suppl. Opp'n; Lear Decl.). In addition, plaintiffs have submitted evidence corroborating the reasonableness of their requested billing rates. (See Van Dalsem Decl. at ¶¶ 11-13, 15 & Exhs. F, G, H, I, K, & L). Based on plaintiffs' evidence and the court's own experience with the rates in these types of cases, see Ingram v. Oroudjian, 647 F.3d 925, 928 (9th Cir. 2011) (agreeing with other circuit courts that "it is proper for a district court to rely on its own familiarity with the legal market" in determining a reasonable rate), the court finds that the hourly rates requested by plaintiffs' counsel are reasonable.

Plaintiffs request hourly rates of between $275-290 for paralegals, (see Van Dalsem Decl. at ¶ 14), $150 for "professionals with specialized experience in electronic document management and production[,]" (id.), and $365 for Jonathan Land, the head of litigation support. (See id.; Suppl. Fees Motion at 20). The evidence plaintiffs have put forth, (see Van Dalsem Decl. at Exh. J), however, appears to be insufficient to establish the reasonableness of the requested rates for paralegals.

In Bistro Exec., Inc., v. Rewards Network, Inc., CV 04-4640 (C.D. Cal. 2007), the court reduced the hourly rate for case assistants, which was $60 over the median billing rate. (See Van Dalsem Decl., Exh. J at 179). There, plaintiffs' counsel provided the International Paralegal Management Association's Annual Compensation Survey for Paralegals/Legal Assistants and Managers as evidence of the reasonableness of the requested rates. (See id.). Relying on the survey, the court awarded fees for support staff commensurate with the market rates for those positions in the Los Angeles – Long Beach area. (See id.). Here, plaintiffs have not provided any such evidence, (see, generally, Van Dalsem Decl.), nor do any of the courts in the other cases plaintiffs put forth discuss the reasonableness of the rates for plaintiffs' legal support staff.

Attorney's fees "can include separately billed paralegal fees, so long as these fees are consistent with market rates and practices." Perez v. Cate, 632 F.3d 553, 556 (9th Cir. 2011) (internal quotation marks and citation omitted). Given plaintiffs' failure to provide sufficient

evidence as to what the appropriate rate for legal support staff is in the Los Angeles area, the court will utilize the approach, with one exception, taken by the court in In re HPL Techs., Inc. Sec. Litig., 366 F.Supp.2d 912 (N.D. Cal. 2005). In that case, the court looked at the Laffey Matrix, "a well-established objective source for rates [in the legal profession,]" id. at 921, to determine the appropriate market rate for legal professionals for a particular locality. See id. at 922 n. 1 (determining rate in the San Francisco bay area). The Laffey Matrix provides hourly rates for attorneys (based on years of experience) and paralegals and law clerks on a yearly basis in the District of Columbia area. The mean rate for paralegals and law clerks for the relevant time period here, June 1, 2013 to May 31, 2014, was $145. (See Department of Justice, Laffey Matrix, 2003-2014) (available at http://www.justice.gov/usao/dc/divisions/Laffey_Matrix%202014.pdf) (last accessed on November 28, 2015).

While the Laffey Matrix considers only hourly rates in the District of Columbia and surrounding areas, the court will adjust the Laffey Matrix numbers by using the relevant locality rate for the Los Angeles region. However, instead of the Judicial Locality Pay Tables, which was used by the court in In re HPL Techs., see 366 F.Supp.2d at 922 n. 1, this court will apply the Occupational Employment Statistics provided by the U.S. Bureau of Labor Statistics. The Occupational Employment Statistics may be a more accurate measure because it makes a like-for-like comparison, that is, mean paralegal hourly rates in the District of Columbia region with the Los Angeles region. In contrast, salaries for federal judicial employees may respond to different market demands than paralegals. The Occupational Employment Statistics have a mean hourly rate of $32.80 for paralegals and other legal professionals in the District of Columbia region and $30.21 in the Los Angeles region. (See May 2014 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates) (available at http://www.bls.gov/oes/current/oes_47900.htm#23-0000) (last accessed on November 28, 2015). As such, the multiplier that the court will use is .921 ($30.21/$32.80). This results in an hourly rate

of $135 for paralegals, far below plaintiffs' requested rates between $275 to $290.[35] See Viveros v. Donahoe, 2013 WL 1224848, *2 (C.D. Cal. 2013) ("When a fee applicant fails to meet her burden of establishing the reasonableness of the requested rates, the court may exercise its discretion to determine reasonable hourly rates based on its experience and knowledge of prevailing rates in the community.").

3. **Reasonableness of Requested Hours**.

The next step in establishing the lodestar amount is determining the reasonableness of the hours expended in pursuing the action. See Blum v. Stenson, 465 U.S. 886, 888, 104 S.Ct. 1541, 1544 (1984) ("The initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate.") (citation omitted). As a general rule, courts "'should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case.'" Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1111 (9th Cir.), cert. denied, 135 S.Ct. 295 (2014) (quoting Moreno, 534 F.3d at 1112). "Typically, '[a]n attorney's sworn testimony that, in fact, [he] took the time claimed . . . is evidence of considerable weight on the issue of the time required." Holt v. Kormann, 2012 WL 5829864, *6 (C.D. Cal. 2012) (internal quotation marks omitted). Nevertheless, the court is tasked with conducting its own independent review. See Gates, 987 F.2d at 1401 (court has duty "to independently review plaintiffs' fee request even absent defense objections").

According to plaintiffs, their counsel spent a total of 3010.4 hours litigating this case from October 25, 2012, to the filing of the instant Motion, (see Suppl. Fees Motion at 17; Van Dalsem Decl. at Exh. E), totaling $1,587,833.00 in attorney's fees and $230,472.17 in costs. (See Van Dalsem Decl. at Exh. E). This amounts to a grand total of $1,818,305.17. (See id.). Of that amount, plaintiffs seek to recover 75% of the total fees and costs or $1,363,728.88, the amount

[35] Because the court lacks a point of comparison to judge the reasonableness of the rate requested for Jonathan Land as head of litigation support and because of the limited hours he billed on the matter (4.3 hours), (see Van Dalsem Decl. at Exh E), the court will adopt plaintiffs' requested rate of $365 for Jonathan Land.

plaintiffs estimate is associated with defendants' litigation misconduct. (See Suppl. Fees Motion at 1; see Van Dalsem Decl. at ¶ 7). Plaintiffs have provided detailed invoices of the attorney's fees associated with this case. (See Van Dalsem Decl. at Exh. D). The invoices provide descriptions of how time was spent by each attorney and legal support staff for each billing period. (See id.). Plaintiffs have also provided the total amounts billed by each attorney and support staff throughout the litigation. (See id. at Exh. E).

Defendants make several arguments why plaintiffs' lodestar is unreasonable. First, defendants assert repeatedly that only a fraction of the hours billed were done in furtherance of the Motion. (See Lear Decl. at ¶¶ 7-11[36]; InHouse's Fees Opp'n at 23-25). In essence, defendants are simply asserting the linkage argument discussed above. See supra at § III.B. But as noted above, the frequency and severity of defendants' misconduct, see supra at § II., coupled with the resulting need to ensure that such abuses are not repeated, see Chambers, 501 U.S. at 56, 111 S.Ct. at 2139, clearly warrant the imposition of full attorney's fees and costs in this case.

Nevertheless, plaintiffs seek only 75% of the total attorney's fees incurred, (see Suppl. Fees Motion at 3), and the court's independent review of the billing statements accords with plaintiffs' contention that 25% of the time billed was generated as part of the normal course of litigation. (See Van Dalsem Decl. at ¶ 7; see id. at Exh. D). However, the court does not agree with plaintiffs' approach of making an across-the-board 25% reduction. (See id. at ¶ 7). Considering the varying hourly rates for each attorney and support staff, it is more appropriate to reduce the number of hours for each attorney and support staff by 25% and compute the fees accordingly. See, e.g., Carter v. Caleb Brett LLC, 741 F.3d 1071, 1074 (9th Cir.), amended, 757 F.3d 866 (9th Cir. 2014) (remanding award of attorney's fees where the court did not distinguish between each billing employee, finding the across-the-board "approach [ ] difficult to understand given that the associate, who billed at the lower rate, billed five times as many hours as the more senior counsel"); (see Van Dalsem Decl. at Exh. E). Accordingly, using exhibit E as a framework, the

[36] Paragraphs 7 and 8 of the Lear Decl. are inadmissible to the extent they call for a legal conclusion and provide legal argument.

attorney's fees are modified as follows:

		Requested			Awarded		
Name	**Title**	**Hourly Rate**	**Hours**	**Subtotal**	**Hourly Rate**	**Hours**	**Total**
Van Dalsem	Partner	$915	174.6	$159,759	$915	131.0	$119,819
Quinto	Partner	$850	19.7	$16,745	$850	14.8	$12,559
Proctor	Partner	$765	424.6	$324,819	$765	318.5	$243,614
Lifrak	Partner	$765	73.8	$56,457	$765	55.4	$42,343
Posner	Partner	$765	8.8	$6,732	$765	6.6	$5,049
Keech	Associate	$465	1078.6	$501,549	$465	809.0	$376,162
		$500	431.6	$215,800	$500	323.7	$161,850
Zhang	Associate	$500	40	$20,000	$500	30.0	$15,000
		$535	8	$4,280	$535	6.0	$3,210
Choe	Associate	$300	72.9	$21,870	$300	54.7	$16,403
		$430	360.2	$154,886	$430	270.2	$116,165
		$465	112.1	$52,127	$465	84.1	$39,095
O'Connor	Paralegal	$275	144.6	$39,765	$135	108.5	$14,641
Jacobs	Paralegal	$290	6.5	$1,885	$135	4.9	$658
Musto	Paralegal	$275	3.6	$990	$135	2.7	$365
Swift	Paralegal	$275	10.1	$2,778	$135	7.6	$1,023
Kleinman	Paralegal	$275	2.7	$743	$135	2.0	$273
Pullen	Paralegal	$275	0.2	$55	$135	0.2	$20
Vasquez	Lit. Support	$150	11.1	$1,665	$135	8.3	$1,124
Espinoza	Lit. Support	$150	9.7	$1,455	$135	7.3	$982
Jovel	Lit. Support	$150	7.2	$1,080	$135	5.4	$729
Kerce	Lit. Support	$150	3	$450	$135	2.3	$304
Alcantara	Lit. Support	$150	1.5	$225	$135	1.1	$152
Silveira	Lit. Support	$150	1	$150	$135	0.8	$101
Land	Lit. Support	$365	4.3	$1,570	$365	3.2	$1,177
			3010.4	$1,587,833		**2257.8**	**$1,172,816**

Second, defendants take issue with the method by which plaintiffs' counsel entered its billable hours. (See Lear Decl. at ¶¶ 12-17). Defendants contend that plaintiffs' lodestar should be reduced because the block-billing method by which plaintiffs' counsel recorded their time "makes it impossible to discern or allocate how much time was spent on each task[,]" (id. at ¶ 12), or "evaluate whether the time spent on such tasks was reasonable." (Id. at ¶ 13). Consequently, defendants argue, the court should reduce the amount of those blocked billed hours by 20 percent. (See id. at ¶ 12).

Block billing frustrates the ability of a court to evaluate the reasonableness of the time spent on each task. See Mendez, 540 F.3d at 1128 (noting that block billing "frustrat[es] the Court's

efforts to determine whether the fees were, in fact, reasonable."). This method of billing "lump[s] together multiple tasks, making it impossible to evaluate their reasonableness." Role Models Am., Inc. v. Brownlee, 353 F.3d 962, 971 (D.C. Cir. 2004). For example, one entry dated October 30, 2012, includes 8.6 hours for preparing, reviewing, and revising discovery requests and deposition notices and conferencing with the case team regarding those actions; conferencing with a subpoenaed third party regarding production and revision of discovery; researching multiple deposition notices to a corporate party in federal litigation and conferencing with the case team regarding said research; and preparing, reviewing, and revising follow-up meet and confer correspondence and correspondence regarding forensic imaging of defendants' electronic media and conferencing with the case team regarding said actions. (See Van Dalsem Decl., Exh. D at 23). Many of plaintiffs' billing records are similarly infirm. (See, e.g., id. at 22-23, 28-32, 37-40, 45-49, 54-56, 61-62, 64-67, 71-74, 78-82, 87-90, 95-98, 102-07, 111-15, 119-21, 126-34 & 138-46). Without more specificity, it is impossible to determine the amount of time spent on each task and whether the time spent on the specific task was reasonable. See Sunstone Behavioral Health, Inc. v. Alameda Cnty. Med. Ctr., 646 F.Supp.2d 1206, 1214 (E.D. Cal. 2009) ("When reviewing such instances of block-billing, it is incumbent upon the court to compare the hours expended against the tasks and assess the reasonableness of those tasks.") (internal quotation marks and citation omitted).

Block billing, however, "does not justify an across-the-board reduction or rejection of all hours." Mendez, 540 F.3d at 1129. Rather, any reduction should be tailored to "those hours that were actually billed in block format." Welch v. Metro. Life Ins. Co., 480 F.3d 942, 948 (9th Cir. 2007). Here, plaintiffs' billing statements included hundreds of individual entries in block billing format. (See, e.g., Van Dalsem Decl., Exh. D at 22-23, 28-32, 37-40, 45-49, 54-56, 61-62, 64-67, 71-74, 78-82, 87-90, 95-98, 102-07, 111-15, 119-21, 126-34 & 138-46). Defendants challenge 1341.3 of the 2609.3 total billed hours, (see Lear Decl. at ¶¶ 14 & 16), or approximately 51.4% of the hours billed, and ask for a 20% reduction of the total fees. (See id.).

A careful review of plaintiffs' billing statements indicates that only 16.6% (or 500.9 hours) of the entries were not in block billed format, i.e., billing statements which included only one task

in the description. (See Van Dalsem Decl., Exh. D at 22-23, 28, 29, 31, 32, 38-40, 45-49,54-56, 61, 62, 64-67, 71-74, 78-82, 87-90, 95-98, 102-107, 111-15, 119-21, 126-32, 138-140 & 142-46). In other words, 83% of all billed fees were in block billed format, i.e. (3010.4-500.9)/3010.4). Given the prevalence of block billing, the court believes a 10% reduction to 83% of the total fees is appropriate. See Moreno, 534 F.3d at 1112 ("the district court can impose a small reduction, no greater than 10 percent – a 'haircut' – based on its exercise of discretion"). Accordingly, the court will reduce plaintiffs' award by $97,344 ($1,172,816 x .83 x .1).

Finally, defendants assert that there was significant duplication in many of the entries submitted and that some of those entries included "unexplained redactions[.]" (Lear Decl. at ¶ 15). These redundancies include "multiple attorneys holding numerous conferences among themselves or with the client, preparing for the same depositions, and drafting/working on the same pleadings." (Id.).

There are a number of entries where billing descriptions are completely redacted. (See, e.g., Van Dalsem Decl., Exh. D at 30, 104, 105 & 130). It is unclear how the court can evaluate the reasonableness of such entries when the entire subject matter is concealed. The party seeking fees is responsible for accurate and specific accounting, see Gates, 987 F.2d at 1397, yet plaintiffs do not attempt to make an argument as to why such redactions were necessary. (See, generally, Suppl. Fees Motion; Fees Reply; Van Dalsem Decl.); see, e.g., Avgoustis v. Shinseki, 639 F.3d 1340, 1344 (Fed. Cir. 2011) (collecting cases and noting that "no court of appeals has held that disclosure of the general subject matter of a billing statement under fee-shifting statutes violates attorney-client privilege"). "Put simply, professionals may not properly avoid scrutiny of their fees by redacting the description of the billing entry." In re Las Vegas Monorail Co., 458 B.R. 553, 558 (Bankr. D. Nev. 2011) (internal quotation and alteration marks omitted). Consequently, the court will completely exclude the 13.4 hours (adjusted to 10.05 hours given the 25% reduction in hours), amounting to $5,974 in fees, where the entirety of the billing description has been redacted. (See Van Dalsem Decl., Exh. D at 30, 104, 105 & 130) (billing 2.4 hours at a rate of $850 per hour for David Quinto; 2.7 hours at a rate of $765 per hour for B. Dylan Proctor & 8.3 hours at a rate of $465 for Julia Choe).

The court is also troubled by the partial redactions made to a significant number of the billing entries. (See, e.g., Van Dalsem Decl., Exh. D at 38) ("Review [redacted], emails re: same, work on [redacted] issues."); (id. at 61) ("Team meeting; [redacted]; provide research to RK."); (id.) ("Review and analyze [redacted] and research regarding same."); (id. at 55) ("TC with [redacted] and R. Keech [redacted]."). Plaintiffs' billing statements contain entries with partially redacted descriptions claiming approximately 335 hours. (See, e.g., id. at 21, 22, 28-32, 38, 40, 45, 47, 54-56, 61, 62, 64-66, 71, 72, 74, 78, 80, 81, 103, 105-107, 111-15, 121, 128, 130-33 & 138-46). However, the Ninth Circuit has held that similarly ambiguous entries withstand scrutiny. See Democratic Party of Wash. State v. Reed, 388 F.3d 1281, 1286 (9th Cir. 2004) (allowing recovery for "Counsel call to discuss [REDACTED]" and "Research Supreme Court case law involving [REDACTED]" because those "redactions [did] not impair the ability of the court to judge whether the work was an appropriate basis for fees"). Having carefully reviewed the redacted entries, the court is persuaded that the entries are of the kind the Ninth Circuit has deemed appropriate, as they do not hinder the court from analyzing the propriety of the work, and are not so voluminous as to concern the court that the hours were spent doing unnecessary or improper work. See id. (allowing redactions that may have, for example, concealed research done "chasing after ghosts" of potential claims or problems because "[a]ny judge who practiced law can tell when the ghost busting is out of hand"). Accordingly, the court will not reduce the lodestar amount for billing entries that contain partially redacted billing descriptions.

Similarly, the court finds that the billing descriptions, which defendants assert are inadequate, (see Lear Decl., Exh. 4 at 1-30), are not so poorly described that the court cannot determine whether plaintiffs should be compensated for the requested time. For example, while defendants object to a July 3, 2013, entry which states "[r]eview and revise multiple filings[,]" (Van Dalsem Decl., Exh. D at 102), as inadequate, (see Lear Decl., Exh. 4 at 23), the court has no difficulty identifying this entry as relating to the four filings submitted that day, all of which directly related to defendants' litigation misconduct. (See Plaintiffs' Reply In Support of Motion to Dismiss Counterclaims, Dkt. No. 146; Reply In Support of Motion to Strike Affirmative Defenses, Dkt. No. 147; Plaintiffs' Reply In Support of Motion for Terminating Sanctions and Other Sanctions Against

Defendants Sis-Joyce International Co., Ltd. and Alice "Annie" Lin, Dkt. No. 148; Plaintiffs' Evidentiary Objections to the Declaration of Alice Lin In Support of Defendants' Opposition to Plaintiffs' Notice of Motion and Motion for Terminating Sanctions and Other Sanctions, Dkt. No. 149); see also Gustafson v. U.S. Bank, 2014 WL 302242, *6 (C.D. Cal. 2014) (awarding attorney's fees where "the categories of billing entries perfectly track Defendants' responses to Plaintiff's pleadings and other filings"). Although there may be some ambiguities in plaintiffs' billing descriptions, (see, e.g., Van Dalsem Decl., Exh. D at 90, 146 & 130), the court is well acquainted with the history of this case and the significant number of docket entries. Under the circumstances, the court is persuaded that plaintiffs' documentation is sufficient to enable the court to assess the reasonableness and purpose of the time spent. See Fox v. Vice, 131 S.Ct. 2205, 2216 (2011) ("The fee applicant . . . must . . . submit appropriate documentation . . . [b]ut trial courts need not, and indeed should not, become green-eyeshade accountants. The essential goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts may take into account their overall sense of a suit, and may use estimates in calculating and allocating an attorney's time.").

With regard to defendants' argument that many billing entries include redundant or duplicative entries, (see Lear Decl., Exh. 4 at 1-30), the court finds that plaintiffs' fee request is appropriate here as well. See Jefferson v. Chase Home Fin., 2009 WL 2051424, *4 (N.D. Cal. 2009) ("Under federal law, the Court has the discretion to reduce the hours if it determines that inefficiency or overstaffing was a problem[.]"). "Other than simply directing the court to particular billing entries, defendant[s] provide[ ] no persuasive reason why having two or three attorneys [perform any of those particular tasks] was unreasonable." Sunstone Behavioral Health, 646 F.Supp.2d at 1214. For example, defendants challenge several entries that reflect work done by two or more attorneys reviewing the same documents. (See Lear Decl., Exh. 4 at 1) ("RQK also billed for reviewing documents produced in response to subpoena on the same day"); (id. at 27) ("BDP and RQK also billed for reviewing Lin letter regarding counsel"); (id. at 16) ("BV also billed for review of 9th Cir. argument order"). Other challenges take issue with the "many hours already billed" for specific tasks. (See, e.g., id. at 3) ("many hours already billed for Payoneer depo prep");

(id. at 15) ("many hours already billed for renewed motion to dismiss "); (id. at 25) ("hours already billed for preparing for hearing"). "[D]uplicative work, however, is not a justification for cutting a fee, unless the lawyer does unnecessarily duplicative work." Mendez, 540 F.3d at 1129 (internal quotations omitted) (emphasis in the original). Taking depositions, preparing filings related to multiple sanctions motions, and preparing the multiple requests to compel production – tasks made necessary by defendants' flagrant misconduct in this case – are significant time consuming exercises. None of defendants' criticisms related to the alleged duplication of work provides a reason as to why the hours billed on a particular item were unnecessary or excessive here. (See, generally, Lear Decl.; id., Exh. 4 at 1-30); see Moreno, 534 F.3d at 1113 ("Findings of duplicative work should not become a shortcut for reducing an award without identifying just why the requested fee was excessive and by how much."). The court will not reduce the lodestar figure for those tasks defendants contend are "redundant" or "duplicative."

4. **Reasonableness of Costs**.

In general, fees claimed for costs and expenses that are customarily billed by private attorneys to fee-paying clients may be awarded as attorney's fees. See Davis, 976 F.2d at 1546 n. 4 & 1557; United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990) ("Out-of-pocket litigation expenses are reimbursable as part of the attorneys' fee"). Plaintiffs contend that they have incurred $230,472.17 in costs, including photocopying, legal research, translation, and travel expenses incurred for travel to depositions. (See Suppl. Fees Motion at 23; Van Dalsem Decl. at ¶ 5; id. at Exh. E). As in the case of attorney's fees, plaintiffs seek 75% of the amount as attributable to defendants' misconduct, or $172,854. (See Suppl. Fees Motion at 23). As in the case of plaintiffs' request for attorney's fees, defendants do not challenge any of the costs sought by plaintiffs. (See, generally, Def'ts Second Fees Suppl. Opp'n; Lear Decl.).

The court has reviewed the monthly summary of costs and, with the exception of costs for online research, believes they are reasonable. Plaintiffs' expense entries for online research include a notation that such costs are "based on standard Westlaw or Lexis, without any applicable discount," (Van Dalsem Decl, Exh. D at 24, 33, 42, 50, 75, 83, 91, 99), but there is no indication as to whether plaintiffs' counsel bill their clients for online legal research and, if so, at what rate,

i.e., the standard or discounted Westlaw or Lexis rates. Thus, the court will exclude $111,591.29 in costs incurred for online research, but awards 75% of the remaining costs – $ 89,161 – as set forth below:

A	B	C	D
Date	**Costs**	**Excluded Costs**	**Reasonable Costs**
	Exh. E.	**Exh. D**	**Column B - Column C**
Oct-12	$7,538.30	$6,115.29	$1,423.01
Nov-12	$5,919.82	$2,915.00	$3,004.82
Dec-12	$14,117.30	$7,154.00	$6,963.30
Jan-13	$24,566.74	$9,764.00	$14,802.74
Feb-13	$5,763.54	$0.00	$5,763.54
Mar-13	$23,011.46	$20,262.00	$2,749.46
Apr-13	$20,224.35	$6,374.00	$13,850.35
May-13	$27,126.80	$17,449.00	$9,677.80
Jun-13	$22,426.70	$9,507.00	$12,919.70
Jul-13	$5,159.55	$0.00	$5,159.55
Aug-13	$20,832.53	$16,294.00	$4,538.53
Sep-13	$6,167.04	$0.00	$6,167.04
Oct-13	$35,739.75	$15,757.00	$19,982.75
Nov-13	$11,878.29	$0.00	$11,878.29
		Subtotal	$118,880.88
		Reasonable Costs	**$89,161**

5. **Summary of Reasonable Attorney's Fees and Costs**.

In sum, the court accepts plaintiffs' proposed lodestar percentage of 75% with the reduction of the hourly rates for plaintiffs' paralegals. This results in a lodestar amount to $1,172,816, which will be reduced by 10% or $97,344, to account for defendants' objections to plaintiffs' block-billed hours. The lodestar will also be reduced $5,974 for the completely redacted billing descriptions. Finally, the court will apply the proposed lodestar percentage of 75% to costs, but excludes overhead costs associated with online legal research, which reduces the costs by $111,591.29. The total for plaintiffs' reasonable attorney's fees and costs is $1,158,659 ($1,172,816 - $97,344 - $5,974 + $89,161).

CONCLUSION

The severity and frequency of defendants' bad faith misconduct is as egregious as anything this court has ever seen or read in any of the cases. Defendants' pattern of bad faith litigation misconduct shows that defendants do "not take [their] oath to tell the truth seriously and . . . will

say anything at any time in order to prevail in this litigation[.]" Anheuser-Busch, 69 F.3d at 352. Defendants provide shifting explanations depending on the day or attorneys that happen to represent them. For example, Alice Lin testified at her October 2013, deposition that she wrote each of the Win, Luong, and Chen declarations in Chinese, and her sister and Sis-Joyce employee, Annie Lin translated them through an online translation program. (See Alice Lin Oct. 2013 Dep. at 281). But then in a declaration, submitted to the court the day after that deposition, Alice Lin declared that she did not authorize or instruct anyone acting under her authority or behalf to create the declarations. (See Alice Lin Opp'n Decl. at ¶ 29) ("I did not draft the declarations themselves, do not know how the signatures were obtained, and did not know whether they were falsified.").

Defendants' briefing reveals no sense of remorse or understanding of the gravity of their actions. (See, generally, Opp'n; Def'ts Second Fees Suppl. Opp'n.); see also Sun World, 144 F.R.D. at 390 (terminating sanctions issued without alternative sanctions considered where litigant "committed a fraud on the court" by submitting fabricated evidence and "there is no sign of repentance or any indication that this pattern of behavior would cease if this case were allowed to proceed"). Instead, defendants try to shift the blame to others, be it another employee or sibling (i.e. Annie) or a previous attorney. For example, defendants' prior counsel, Jew, sought to withdraw as counsel because he believed that his "continued employment will result in violation of the Rules of Professional Conduct," and defendants' "continued defiance of the[ir] counsel's legal advice by refusing to follow it," (Jew Motion Decl. at ¶¶ 8-9), including Alice Lin's repeated refusal to turn over to plaintiffs items clearly enjoined under the preliminary injunction. (See Jew Reply Decl. at ¶ 9). Rather than admit her own violation of a court order, Alice Lin, now represented by her fourth counsel in this case, protests that Jew "never should have filed" the Luong, Chen, or Win declarations that she originally prepared in Chinese. (See Def'ts Second Fees Suppl. Opp'n at 2).

The court could go further, but it need not. Plaintiffs have demonstrated by clear and convincing evidence that defendants fabricated a declaration for a phantom witness (Alice Win), forged a declaration (Jess Chen / Jessie Xu), falsified and fraudulently procured a declaration

(Amy Huong), filed these false declarations with different federal courts, obstructed the discovery process by filing fraudulently procured complaints with the Northern District of California, lied under oath, and violated the court's preliminary injunction.

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiffs' Renewed Motion for Terminating or Other Sanctions **(Document No. 195)** is **granted** as follows. The court hereby exercises its inherent power and strikes defendants answer, dismisses their counterclaims, orders the entry of default judgment against defendants' on plaintiffs' claims, and orders defendants to pay plaintiffs attorney's fees and costs in the amount of $1,158,659.

2. No later than **December 16, 2015**, plaintiffs' counsel shall lodge a proposed form of judgment that takes into account this order as well as the requirements set forth in the court's preliminary injunction. Any objections to the proposed judgment shall be filed no later than **December 18, 2015**. If any objections are filed to the proposed judgment, plaintiffs shall file a reply to the objections no later than **December 21, 2015**.

Dated this 14th day of December, 2015.

/s/
Fernando M. Olguin
United States District Judge

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

American Rena International Corp., a California corporation; WanZhu "Kathryn" Li, an individual; and Robert M. Milliken, an individual,

Plaintiffs,

vs.

Sis-Joyce International Co., Ltd., a California corporation; Alice "Annie" Lin, an individual; Robert Simone, an individual; Christine "Nina" Ko, an individual; and DOES 3-10,

Defendants.

CASE NO. 12-06972-FMO (JEMx)

FIRST AMENDED COMPLAINT FOR:

1. **FEDERAL TRADEMARK INFRINGEMENT;**
2. **COMMON LAW TRADEMARK INFRINGEMENT;**
3. **TRADEMARK CANCELLATION;**
4. **FEDERAL UNFAIR COMPETITION;**
5. **COPYRIGHT INFRINGEMENT;**
6. **VIOLATION OF THE ANTI-CYBERSQUATTING CONSUMER PROTECTION ACT;**
7. **TRADE SECRET MISAPPROPRIATION;**
8. **INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;**
9. **TRADE LIBEL;**
10. **FALSE LIGHT INVASION OF PRIVACY;**
11. **VIOLATION OF RIGHT OF**

PUBLICITY;
12. CALIFORNIA STATUTORY UNFAIR COMPETITION;
13. CALIFORNIA COMMON LAW UNFAIR COMPETITION;
14. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT VIOLATION;
15. CONSPIRACY TO VIOLATE RICO; AND
16. UNJUST ENRICHMENT

JURY TRIAL DEMAND

Plaintiffs American Rena International Corp. ("Rena"), WanZhu ("Kathryn") Li, and Robert M. Milliken ("Milliken") complain and allege as follows against defendants Sis-Joyce International Co. Ltd., ("Sis-Joyce"), Alice "Annie" Lin ("Lin"), Robert Simone ("Simone"), Christine "Nina" Ko ("Ko"), and DOES 3-10:

NATURE OF THE ACTION

1. This is an action to prevent the complete theft of a business – lock, stock, and barrel. Plaintiff WanZhu "Kathryn" Li is an entrepreneur who began manufacturing and distributing skincare products in Los Angeles, California in 2006. The company she founded, plaintiff Rena, quickly grew to directly employ 20 persons in California. By 2010 Rena generated $30 million in annual sales, with the bulk of that sum resulting from exports to the People's Republic of China and other countries in Asia.

2. Defendant Lin, Simone, and Ko were customers and independent sales agents for Rena's products who embarked on a brazen scheme to compete unfairly with Rena and, ultimately, steal its business altogether. Initially, Lin engaged in straightforward counterfeiting – she manufactured counterfeit labels using Rena's proprietary RENA and RENA BIOTECHNOLOGY marks, applied them to generic bottles, and then sold adulterated RENA products she had purchased from Rena in competition with Rena. When Rena learned of Lin's perfidy in late 2010, it cut off her supply of RENA products. On information and belief, Lin then attempted to pass off bottles of tap water as genuine RENA products.

3. Lin was neither deterred by Rena's cutting off her supply of products nor satisfied with the harm she had caused through their counterfeiting. On the contrary, when Rena sought to put an end to her counterfeiting of authentic RENA products, Lin, with the help of defendants Simone and Ko, embarked on a secret campaign to co-opt the market for RENA products, and to hijack Rena's entire business. Operating under the name of defendant Sis-Joyce, Lin secretly told Rena's consumers that Rena was out of business and that defendant Sis-Joyce – an

entity owned by Lin – now sold RENA products. With the help of Simone and Ko, Lin released and distributed a competing product called "ARëna," which defendants labeled as "new" and "improved." Defendants went so far as to claim in marketing materials that "**Rena is Now aRena!**," and described "ARëna" as an "Activation Energy Serum" – the same description that Rena uses for its product. Lin also falsely told Rena's independent sales agents and customers that Rena had been acquired by "ARëna" or sold its proprietary product formulas to "ARëna," and that Rena's "new" products *were* "ARëna." Simone, with the knowledge or constructive knowledge of the other defendants, launched websites, including www.RenaSkin.com and www.ArenaSkin.com, which blatantly misappropriate Rena's trademark, copy vast quantities of copyrighted materials from Rena's website, included the names and photographs of *Rena's* founders, and sold defendants' infringing "ARëna" products. Simone also launched YouTube videos displaying and advertising *Rena's* products and trademarks, but directing the public to defendants' knockoff websites. Defendants sold their "ARëna" products in bottles that precisely copy the highly distinctive .51 oz plastic bottle designed by Rena for its principal product, the RENA Activation Energy Serum.

4. Since defendants launched their bogus "ARëna" products and engaged in their campaign to steal Rena's business and customers, Rena's worldwide sales have dropped astronomically – from an average of approximately $2.5 million a month as of 2010 and early 2011 to less than $500,000 a month now. By purporting to *be* Rena, defendants have destroyed virtually all of Rena's U.S. sales and are now cutting substantially into its foreign sales. Unless enjoined, defendants will complete what they set out to achieve – the wholesale theft of Rena's business.

5. On July 4, 2012, Rena was notified by several sales agents in China of overtures received from Lin to sell purported "ARëna" products. It was only then that Rena discovered Lin's surreptitious effort to steal Rena's business and clients

through their misleading statements to purchasers, and it was only then that Rena discovered the infringing "ARëna" products.

6. Plaintiffs seek preliminary and permanent injunctive relief to enjoin and restrain defendants' acts of direct and contributory trademark infringement, copyright infringement, false and deceptive advertising, trade secret misappropriation, trade libel, interference with prospective economic advantage, unfair competition, and invasion of privacy; cancellation of defendant Lin's NEW! ARËNA ACTIVATION ENERGY SERUM trademark; an order transferring ownership of the purported www.RenaSkin.com and www.ArenaSkin.com domain names to Rena; an order impounding the infringing goods; restitution of defendants' illicit gains; damages; and punitive and exemplary relief.

PARTIES

7. Plaintiff Rena is a California corporation having its principal place of business in Los Angeles, California.

8. Plaintiff WanZhu Li is an individual who resides in Los Angeles County, California. Li is sometimes known by her Chinese nickname, "WenJia," and sometimes by her American name, "Kathryn."

9. Plaintiff Robert M. Milliken is an individual who resides in Los Angeles County, California. Milliken is the Chief Executive Officer of Rena.

10. Defendant Sis-Joyce is a California corporation having its principal place of business in Elk Grove, California. Sis-Joyce is owned, in whole or in part, by defendant Lin.

11. Defendant Alice "Annie" Lin is an individual who, upon information and belief, resides in Fremont, California and is an owner of Sis-Joyce.

12. Defendant Robert Simone is an individual who, upon information and belief, resides in Los Angeles County, California. Mr. Simone is listed as having registered domain names and obtained hosting services for the

www.RenaSkin.com and www.ArenaSkin.com websites, which exclusively sell Sis-Joyce-supplied ARëna products.

13. Defendant Christine "Nina" Ko is an individual who, upon information and belief, resides in Los Angeles County, California. Upon information and belief, Ko is an agent of Sis-Joyce who shares responsibility for Sis-Joyce's operations.

14. Plaintiffs are ignorant of the true names and capacities of the defendants who are named herein under the fictitious names DOES 3-10, inclusive. Plaintiffs will seek leave of the court to amend the complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe, and based thereon allege, that each of the fictitiously named DOE defendants is responsible in some manner for the wrongful conduct alleged herein. Plaintiffs further allege that each defendant acted in concert and participation with, as agent of or representative for, at the request of, or on behalf of Sis-Joyce, Lin, Simone, and/or Ko. Each charge and allegation alleged herein is, therefore, also hereby alleged against each fictitiously named DOE defendant.

JURISDICTION AND VENUE

15. This action arises under the Lanham Trademark Act, 15 U.S.C. Sections 1114, 1116, 1117, and 1125(a) and (d); 17 U.S.C. Sections 101, *et seq.*; and 18 U.S.C. Section 1964(c). This Court has original subject matter jurisdiction pursuant to 20 U.S.C. Section 1331, *et seq.*; 28 U.S.C. Sections 1331 and 1338; 15 U.S.C. Sections 1116 and 1121; and 18 U.S.C. Section 1964(c). This Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. Section 1367.

16. Venue lies in this District pursuant to 28 U.S.C. Sections 1391(b) and (c); 28 U.S.C. Section 1400(a); and 18 U.S.C. Section 1965.

FACTUAL ALLEGATIONS

Rena's Business and Trademarks

17. Rena is an internationally acclaimed manufacturer and distributor of high-end skin care, healthcare, and anti-aging products located in Los Angeles, California. Since June 2006, it has sold its products using its RENA and RENA BIOTECHNOLOGY trademarks. RENA BIOTECHNOLOGY is registered in the United States in International Class 5. Rena was founded and is owned by plaintiff Kathryn Li, who is also the registered owner of its trademarks and who has granted an exclusive license of those trademarks to Rena. Plaintiff Robert Milliken is Rena's Chief Executive Officer.

18. Rena manufactures and sells a suite of health-related products, including Activation Energy Serum, Activation Mist, and Activation Energy Elixir. Rena's scientists have extracted nearly 100 minerals and trace elements for use in products designed to help users resist the effects of aging. The Rena products incorporating those natural minerals are absorbed through the skin and can reach a depth of 30 to 50 millimeters. Rena's products are designed to reduce wrinkles, inflammation, and pain while moisturizing skin and promoting skin health.

19. To protect its valuable and unique products, Rena has sought U.S. trademark registrations for its marks. It obtained registration of its RENA BIOTECHNOLOGY word mark, No. 3,332,867, in 2007 with a first-use-in-commerce date of February 1, 2007. In April 2012, it applied for registration of a stylized RENA BIOTECHNOLOGY mark, Serial No. 85,587,003, with a first-use-in-commerce date of June 29, 2006. The stylized RENA BIOTECHNOLOGY mark, used on all Rena products since June 2006, is shown below.

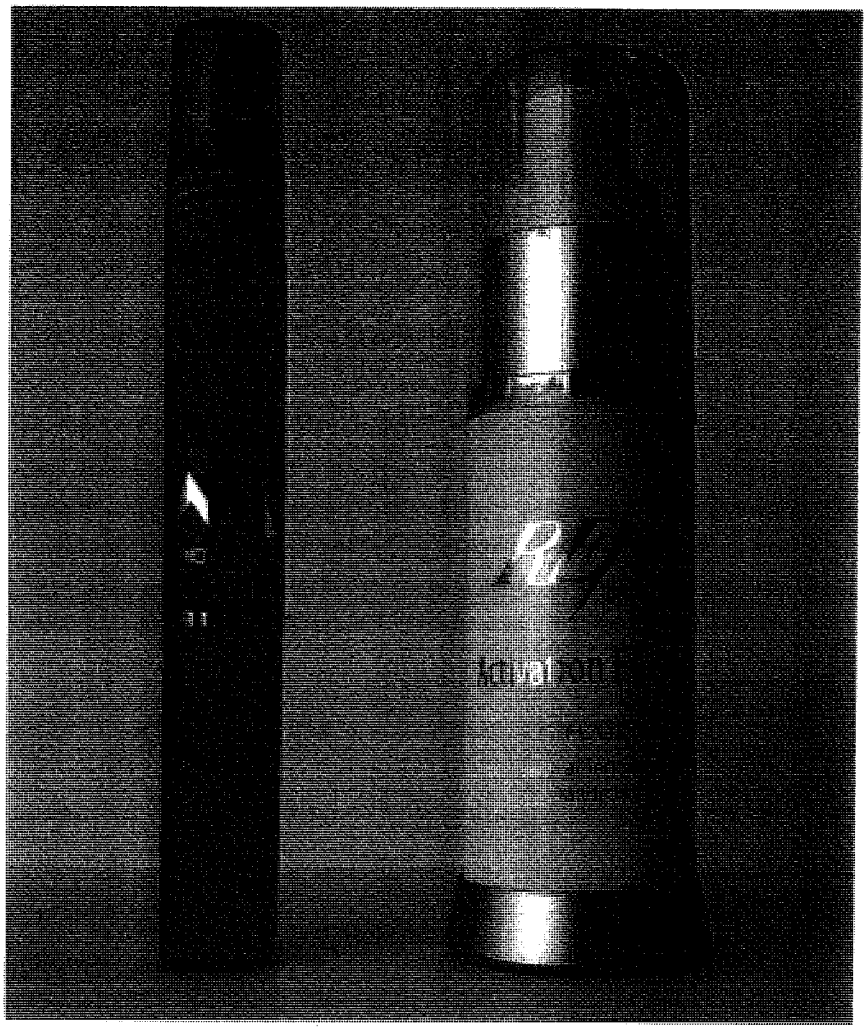
20. In addition, in April 2012, Rena applied to register various other stylized RENA and RENA BIOTECHNOLOGY marks, using both English letters and Chinese characters, including the stylized RENA mark standing alone. Those applications are currently pending.

21. The authentic products sold by Rena prominently display the RENA and RENA BIOTECHNOLOGY marks, as shown below:

Defendants' Counterfeiting

22. At one time, defendant Lin, Ko and Simone were authorized distributors of RENA products. Yet while they were only authorized to sell genuine RENA products – placing orders that would be fulfilled by Rena itself – defendant Lin in fact started selling adulterated RENA products by applying counterfeited labels that used Rena's protected trademarks to generic spray bottles, which were then filled with diluted RENA products and sold as genuine.

23. The photograph below depicts exemplars of two bottles used by Lin to sell her counterfeit RENA products.



24. Upon discovering this counterfeiting in or about October or November 2010, Rena discontinued Lin's supply of RENA products, believing that cutting off Lin's supply of product would force an end to her counterfeiting and infringement.

25. But Lin did not abandon these illegal activities. Instead, on information and belief, Lin started selling tap water or contents other than the genuine Rena product, which she passed off as genuine RENA products using their counterfeit labels.

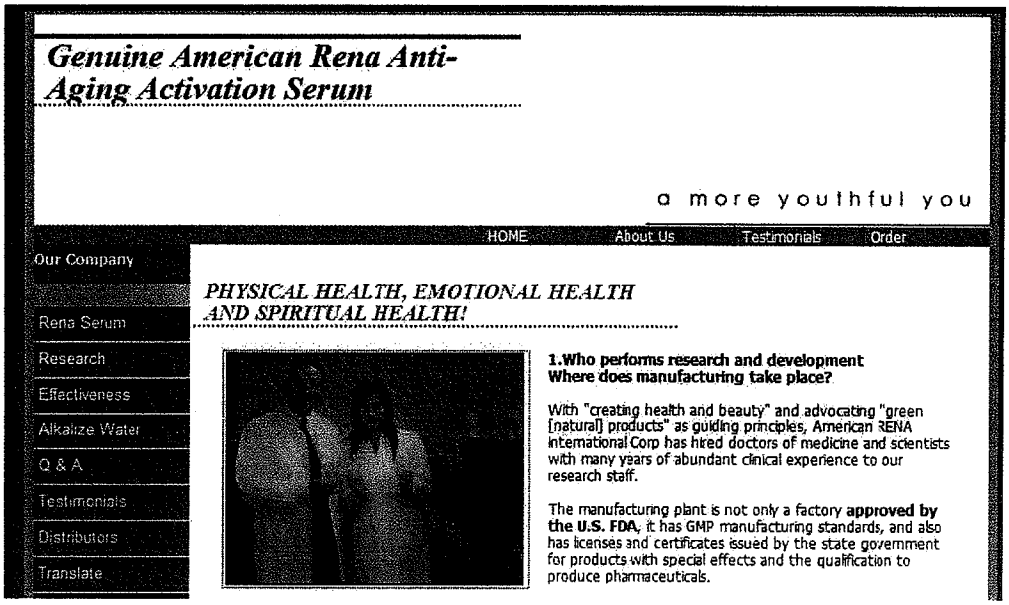
Defendants' Fraudulent Websites and Sales

26. Starting in or about early 2011, Lin began working with agents and/or distributors, including Simone and Ko, to manufacture and sell so-called

"ARëna" products. Like Lin, both Simone and Ko were former members of Rena. To further their plan, Lin, Simone, and Ko communicated through e-mail to plan meetings and distribute materials to promote infringing products. These efforts also included the creation and operation of fraudulent and infringing websites.

27. With the knowledge or constructive knowledge of Lin and Ko, Simone registered the www.RenaSkin.com website through an intermediary or using an assumed name, "Damon Rith," in an effort to hide his involvement in the site. The "WHO IS" look up reflects that "Damon Rith" is the registrant, administrative contact, and technical contact for RenaSkin.com and that he purportedly resides at "123 Reed Street" in Blue Bell, Pennsylvania 19422 – an address that does not exist. There is also apparently no known record of "Damon Rith" in Pennsylvania. Defendant Simone registered the RenaSkin.com domain name using false contact information in an effort to hide his true identity. On August 14, 2012, defendant Simone purchased private, anonymous domain registration services for Renaskin.com, using the e-mail address renausa1@gmail.com.

28. The RenaSkin.com website has been carefully crafted to cause maximum confusion with plaintiff Rena's genuine products and plaintiff's AmericanRena.com website. Virtually every page of the site has the following header: "***Genuine American Rena Anti-Aging Activation Serum.***" The site declares that "Rena Activation Energy contains innovative materials, processed from natural minerals by an advanced purifying technology." As shown below, the site displays a photograph of Rena's founder, Kathryn Li, and its Chief Executive Officer, Robert Milliken, with the caption, "Who performs research and development[?] Where does manufacturing take place?"



29. The site copies substantially all the designs, graphics, photographs and text of the AmericanRena.com website. The site declares, in the "Q&A" section, that "American RENA external use products … do not contain alcohol or preservatives" in response to the question, "I've heard that American RENA Activation Spray external spray products are very effective at restoring and preserving skin with pimples or have been damaged as a result of using cosmetics containing lead, mercury, or stimulants - is this true?" Remarkably, the RenaSkin.com website even has a large reprint of Rena's stylized RENA BIOTECHNOLOGY trademark (shown below) and depictions of *Rena's* products and brochures.

30. The purported RenaSkin.com website copies extensively from Rena's AmericanRena.com website, even to the extent of reproducing a letter authored by Mr. Milliken. The purported RenaSkin.com site includes such headings as "RENA-LIQUID FAR INFRARED = ALKALINE NEGATIVE ION" and "DESCRIPTION OF RENA LIQUID LIFE ACTIVATION ENERGY PRODUCTS," and contains descriptions of "American Rena Activation Serum," among numerous references to "American Rena," "American RENA," and "RENA." It contains a "*COMPARISON OF BOTOX VERSUS American RENA*," and depicts two pages copied from the American Rena brochure and website. Still further, the stylized RENA BIOTECHNOLOGY trademark appears in conjunction with references to the purported RenaSkin.com website.

31. Products ordered from RenaSkin.com were shipped from an address obtained and used by Simone with the non-existent address information of the

"Domain of Melchizedek." The infringing products were packaged with the Sis-Joyce logo and labeled "New! ARëna Activation Energy Serum." Further, the packaging used to ship the infringing products bore a stylized RENA mark and included promotional brochures containing variations of plaintiffs' protected RENA and RENA BIOTECHNOLOGY marks.

32. Rena is further informed and believes that with the knowledge or constructive knowledge of Lin and Ko, Simone registered the www.ArenaSkin.com website using an assumed name, "Dave Simms," and the emails renausa1@gmail.com and submitmystuff@yahoo.com. The "WHO IS" information provided to the registrar of the ArenaSkin.com domain name reflects that (i) the registrant is "Dave Simms," (ii) the administrative contact is "Dave Ded," (iii) the technical contact is "Dave Sed," (iv) Ded and Sed can be found at "123 Red Road" in Blue Bell, Pennsylvania 19422; and (v) Simms can be found at "124 Red Road" in Blue Bell, Pennsylvania 19422. In fact, there is no "Red Road" in Blue Bell, nor does there appear to be a "David Simms" in that city. Thus, as to the ArenaSkin.com website as well, the registrar was provided with false information to hide the true names and capacities of the registrant, administrative contact, and technical contact.

33. The purported ArenaSkin.com site is very similar to the RenaSkin.com site, and is equally infringing of Rena's rights. For example, the header at the top of each page has been modified to proclaim, "***Genuine American aRena Anti-Aging Activation Serum***" - but is accompanied by the explanation that, "**Rena is Now aRena!**" The purported **"aRena"** products are described as having a "**New Improved Formula**" in an effort to persuade consumers that Rena has become "ARëna" when it has not. It, too, copies without authorization a letter authored by Rena's Chief Executive Officer, Robert Milliken, extolling the benefits of genuine Rena products. Further, it has extensively copied graphics and text from Rena's website.

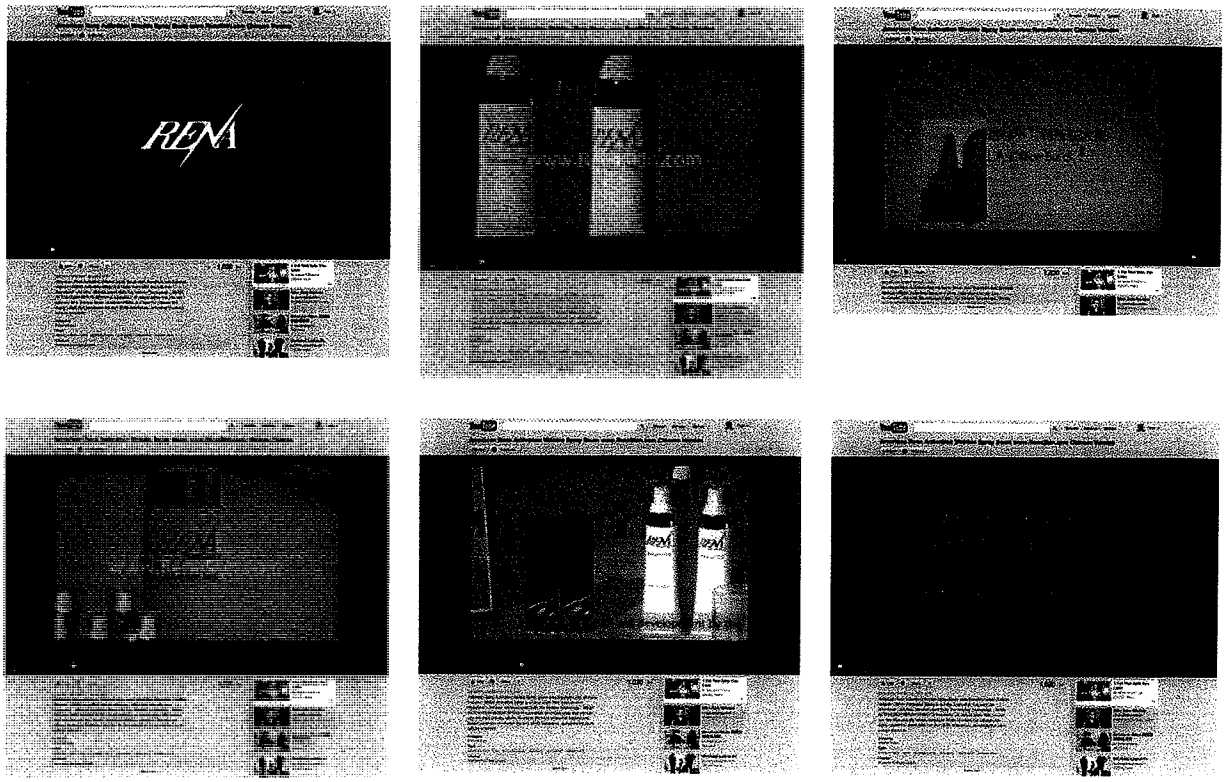
34. Records reveal that defendant Simone controlled the payment accounts used to process orders from ArenaSkin.com and RenaSkin.com. Simone used the alias "Rena Corp," login alias "AMERICANRENA," and the e-mail addresses renausa1@gmail.com; robmib@excite.com; and robsimonetalks@yahoo.com, all of which were designed to hide Simone's involvement with the websites.

35. With the knowledge or constructive knowledge of Lin and Ko, Simone registered yet another website, www.American-Rena.com, using the alias "Robert Sim." This website displayed "American Rena" on its homepage, advertised "ARena Activation Serum" as "American RENA Activation Serum Spray," and displayed the infringing .51 ounce ARëna bottle beside a paragraph stating that "Rena Activation Energy contains innovative materials, processed from natural minerals by an advanced purifying technology."

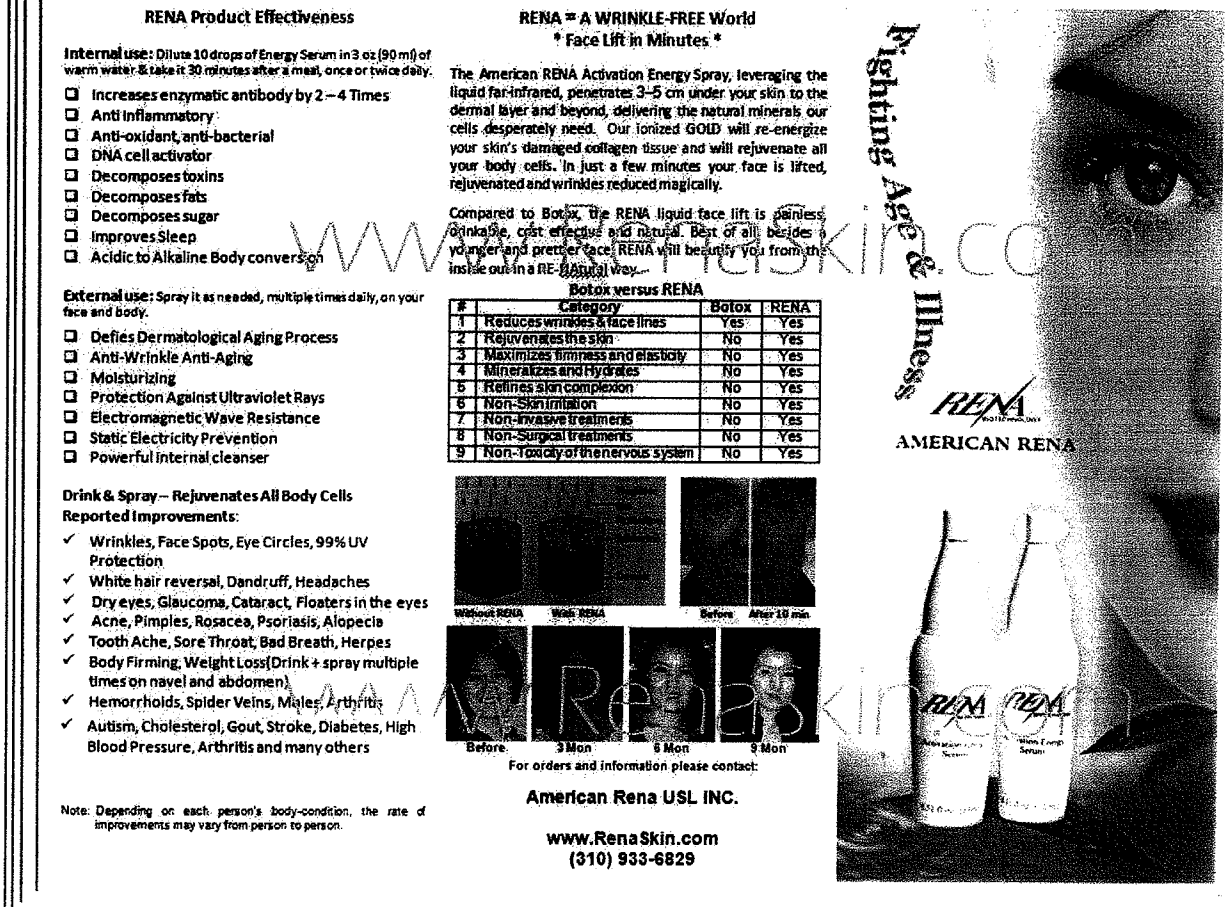
36. In addition, many of the images, graphics, and scientific references found on Rena's website (www.AmericanRena.com) also appear on Sis-Joyce's website (www.SisJoyce.com), purportedly registered by a third party but beneficially owned by Lin.

Defendant's Fraudulent Advertisements

37. Defendants have also taken measures to directly trade on the goodwill and popularity of Rena's products in advertisements for their own infringing products. For example, Simone, with the knowledge or constructive knowledge of the other defendants, posted YouTube videos that *appear* to promote genuine RENA products – and display those products, and even Rena's place of business in Los Angeles – but then direct consumers to the bogus RenaSkin.com website that sells defendants' infringing goods. Screen shots of the fraudulent videos posted on YouTube include the following:



38. Still further, defendants provide fliers and brochures with their products that use many of the same photographs, images and designs as appear in Rena's promotional materials. Indeed, the RenaSkin.com website itself displays *Rena's* promotional brochures in an effort to sell the infringing "ARëna" products, as shown:



RENA Product Effectiveness

Internal use: Dilute 10 drops of Energy Serum in 3 oz (90 ml) of warm water & take it 30 minutes after a meal, once or twice daily.

- ☐ Increases enzymatic antibody by 2 – 4 Times
- ☐ Anti Inflammatory
- ☐ Anti-oxidant, anti-bacterial
- ☐ DNA cell activator
- ☐ Decomposes toxins
- ☐ Decomposes fats
- ☐ Decomposes sugar
- ☐ Improves Sleep
- ☐ Acidic to Alkaline Body conversion

External use: Spray it as needed, multiple times daily, on your face and body.

- ☐ Defies Dermatological Aging Process
- ☐ Anti-Wrinkle Anti-Aging
- ☐ Moisturizing
- ☐ Protection Against Ultraviolet Rays
- ☐ Electromagnetic Wave Resistance
- ☐ Static Electricity Prevention
- ☐ Powerful internal cleanser

Drink & Spray – Rejuvenates All Body Cells
Reported Improvements:

- ✓ Wrinkles, Face Spots, Eye Circles, 99% UV Protection
- ✓ White hair reversal, Dandruff, Headaches
- ✓ Dry eyes, Glaucoma, Cataract, Floaters in the eyes
- ✓ Acne, Pimples, Rosacea, Psoriasis, Alopecia
- ✓ Tooth Ache, Sore Throat, Bad Breath, Herpes
- ✓ Body Firming, Weight Loss(Drink + spray multiple times on navel and abdomen)
- ✓ Hemorrhoids, Spider Veins, Moles, Arthritis
- ✓ Autism, Cholesterol, Gout, Stroke, Diabetes, High Blood Pressure, Arthritis and many others

Note: Depending on each person's body-condition, the rate of improvements may vary from person to person.

RENA = A WRINKLE-FREE World
*** Face Lift in Minutes ***

The American RENA Activation Energy Spray, leveraging the liquid far-infrared, penetrates 3–5 cm under your skin to the dermal layer and beyond, delivering the natural minerals our cells desperately need. Our ionized GOLD will re-energize your skin's damaged collagen tissue and will rejuvenate all your body cells. In just a few minutes your face is lifted, rejuvenated and wrinkles reduced magically.

Compared to Botox, the RENA liquid face lift is painless, drinkable, cost effective and natural. Best of all, besides a younger and prettier face, RENA will beautify you from the inside out in a RE-Natural way...

Botox versus RENA

#	Category	Botox	RENA
1	Reduces wrinkles & face lines	Yes	Yes
2	Rejuvenates the skin	No	Yes
3	Maximizes firmness and elasticity	No	Yes
4	Mineralizes and Hydrates	No	Yes
5	Refines skin complexion	No	Yes
6	Non-Skin irritation	No	Yes
7	Non-invasive treatments	No	Yes
8	Non-Surgical treatments	No	Yes
9	Non-Toxicity of the nervous system	No	Yes

Without RENA With RENA

Before After 10 min

Before 3 Mon 6 Mon 9 Mon

For orders and information please contact:

American Rena USL INC.

www.RenaSkin.com
(310) 933-6829

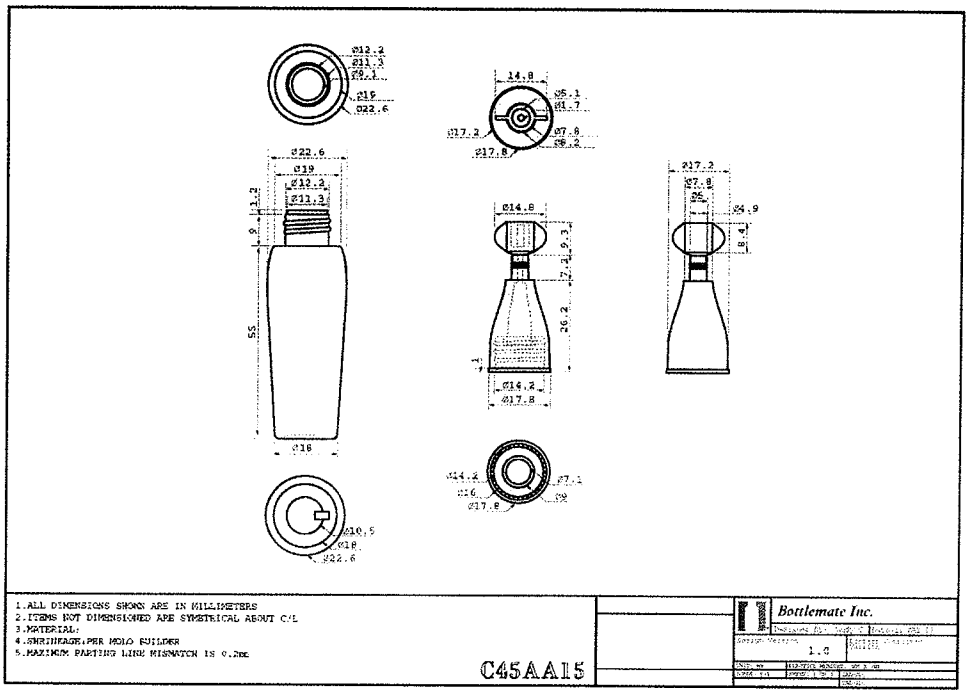
Fighting Age & Illness

RENA

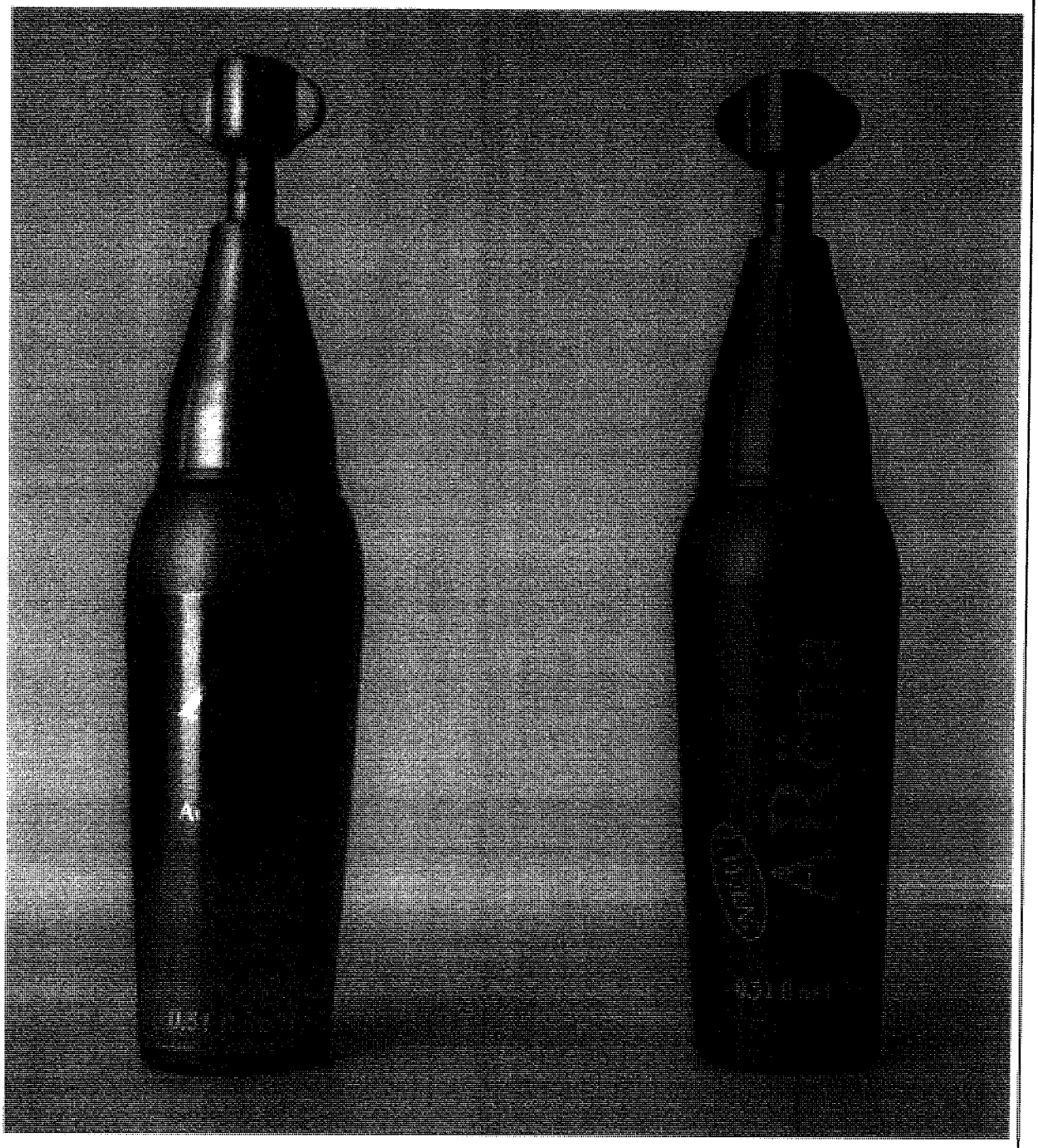
AMERICAN RENA

Defendants' Infringing Trade Dress

39. Not satisfied with merely using and infringing upon Rena's trademarks and copyrights, have also sold their knock-off "ARëna Activation Energy Serum" product in a manner that infringes Rena's trade dress. Rena sells its RENA Activation Energy Serum product in a distinctive, specially designed .51 fluid ounce bottle that is typically lavender in color. The engineering drawings of Rena's distinctive .51 fluid ounce Activation Energy Serum bottle are reproduced below.



40. To further create the misperception that the ARëna product is a Rena product, defendants sell their "ARëna Activation Energy Serum" product in a bottle that is identical in size and shape to the distinctive bottle used by Rena; with a similar color; and with the infringing "ARëna" name and the same "Activation Energy Serum" description that appears on the genuine RENA product. The visual similarity between Rena's Activation Energy Serum product and that sold by defendants is striking. Reprinted immediately below is a photograph of Rena's Activation Energy Serum bottle, and defendants' Activation Energy Serum bottle.



Defendants' Infringing Mark

41. Defendant Sis-Joyce obtained a registration of "Sis-Joyce" from the United States Patent and Trademark Office in International Class 3 on July 26, 2011 (identifying the registrant as defendant Lin). Nevertheless, defendants have chosen to trade on and exploit the extremely valuable goodwill that Rena has developed in

its RENA and RENA BIOTECHNOLOGY marks with the intent to arrogate that goodwill to itself. In furtherance of that objective, defendants have obtained a federal registration of a NEW! ARËNA ACTIVATION ENERGY SERUM mark, as shown below:

42. Defendants have engaged in a coordinated effort to both directly counterfeit genuine RENA products and also pass their products off as "new Rena" products. Defendants Sis-Joyce, its owner, Lin, and its distributors Simone and Ko have aggressively marketed and sold purported "ARëna Activation Energy Serum" products, often without making mention of Sis-Joyce and always in a manner designed to cause confusion with genuine RENA products.

Defendants' Interference With Rena's Business Relationships

43. Rena's sales numbers dramatically reveal the effect of Defendants' unfair competition and fraudulent activities. During calendar year 2009, Rena's sales totaled just under $17 million. During calendar year 2010, Rena's total sales were approximately $30 million and Rena's revenues easily exceeded $1 million during each month of the year. In August 2011, Rena did approximately $2.2 million in business, but that was the last time it achieved seven-figure sales. Since then, its monthly sales have steadily declined, dropping to just $271,000 in June of 2012. Absent immediate relief, Rena, which less than one year ago had a very successful and growing export business, will be out of business altogether.

FIRST CLAIM FOR RELIEF

(Direct and Contributory Statutory Trademark Infringement by Rena and Kathryn Li against all Defendants)

(15 U.S.C. § 1114)

44. Plaintiffs Rena and Kathryn Li incorporate and re-allege paragraphs 1-43 of this Complaint.

45. Kathryn Li owns, and Rena has the exclusive right to use, the federally registered RENA BIOTECHNOLOGY trademark in connection with Rena's products. The RENA BIOTECHNOLOGY trademark is highly distinctive and fanciful, and has earned a strong secondary meaning within the organic, natural anti-aging products market.

46. Defendants' use of their purported "ARëna," "aRena," and "aRENA" marks on directly competing products has infringed, and is infringing, the RENA BIOTECHNOLOGY trademark.

47. Likewise, Defendants' sales of products using the RENA BIOTECHNOLOGY mark and uses of the RENA BIOTECHNOLOGY mark to promote sales of their "ARëna," "aRena," and "aRENA" products has infringed, and is infringing, the RENA BIOTECHNOLOGY trademark.

48. Defendants' use of their infringing marks is likely to cause confusion, cause mistake, or deceive consumers as to the affiliation, connection or association of defendants and their products with those of Rena, and is likely to cause confusion, cause mistake, or deceive consumers as to the origin, sponsorship, or approval by Rena of defendants' products. Such likelihood of confusion is magnified by defendants' intentional use of deceptively similar product packaging, deceptively similar websites, and deceptively similar domain names intended to cause confusion with Rena's products, as well as by frequent advertising references to "American Rena" intended to cause confusion with Rena's

www.AmericanRena.com website, and by infringements of Rena's product brochures, flyers, and website.

49. Defendants' use of their infringing variations of the purported "ARëna" mark enables defendants to benefit unfairly from Rena's reputation and success, thus giving defendants' infringing products sales and commercial value they would not otherwise have.

50. Prior to defendants' first use of their infringing marks, defendants were aware of Rena's business and, indeed, defendants Lin, Simone, and Ko had served as distributors of Rena's products. Further, defendants had actual notice and knowledge, or constructive notice, of plaintiffs' registered trademarks.

51. Defendants Lin, Sis-Joyce, and Ko are also liable for contributory trademark infringement as suppliers of infringing goods to defendant Simone. Lin, Sis-Joyce, and Ko have supplied infringing "ARëna" products to defendant Simone even after they knew, or had reason to know, that defendant Simone was infringing plaintiffs' RENA BIOTECHNOLOGY mark, as described herein. Defendants Lin, Sis-Joyce, and Ko had knowledge or constructive knowledge of Simone's infringing actions based on their management and control over the distribution and promotion of the infringing "ARëna" products, as well as Simone's status as an active Sis-Joyce member. Simone's acts of infringement, as alleged herein, include but are not limited to: his operation of websites and posting of Youtube videos that have infringed, and are infringing, the RENA BIOTECHNOLOGY trademark; his use of the "ARëna," "aRena," and "aRENA" marks on directly competing products; and his sales of products using the RENA BIOTECHNOLOGY mark.

52. Defendants' direct and contributory infringement of the registered trademark as described herein has been and continues to be intentional, willful and without regard to the rights of Rena and Kathryn Li.

53. Rena and Kathryn Li are informed and believe, and on that basis allege, that defendants have gained profits by virtue of their direct and contributory infringement of the RENA BIOTECHNOLOGY trademark.

54. Plaintiffs will suffer, and are suffering, irreparable harm from defendants' direct and contributory infringement of their registered trademarks insofar as their invaluable goodwill is being misappropriated by defendants' continuing infringement. Plaintiffs Rena and Kathryn Li have no adequate remedy at law to compensate them for the loss of business reputation, customers, market position, and goodwill and confusion of potential customers flowing from defendants' infringing activities. Pursuant to 15 U.S.C. § 1116, plaintiffs Rena and Kathryn Li are entitled to preliminary and permanent injunctive relief against defendants' continuing infringement of their registered trademark. Unless enjoined, defendants will continue their infringing conduct.

55. Because defendants' actions have been committed with the intent to damage Rena and Kathryn Li and to confuse and deceive the public, Rena and Kathryn Li are entitled to recover defendants' profits, treble their actual damages, an award of costs, and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

SECOND CLAIM FOR RELIEF

(Direct and Contributory Common Law Trademark Infringement by Rena and Kathryn Li

against all Defendants)

56. Plaintiffs Rena and Kathryn Li incorporate and re-allege paragraphs 1-55 of this Complaint.

57. Beginning in 2006 and continuously thereafter, plaintiffs have made commercial use of their RENA word and design marks in interstate commerce in connection with the manufacture and sale of their skin care, health care, and anti-

aging products as alleged herein, including their Activation Energy Serum, Activation Mist, and Activation Energy Elixir products.

58. Within the market for organic, natural, ingestible anti-aging skin-care products, the RENA word and design marks have developed exceptionally strong goodwill and an exceptionally strong secondary meeting as identifying Rena's products and/or as coming from a single source. For that reason, defendants have falsely misrepresented to the trade and consuming public that they either acquired Rena or bought formula of RENA product or somehow evolved from it.

59. Prior to defendants' first use of their infringing marks, defendants were aware of plaintiffs' business and had actual notice of plaintiffs' trademarks.

60. Defendants' use of the purported "ARëna," "aRena," "aRENA," and "NEW! ARËNA ACTIVATION ENERGY SERUM" marks, as well as their use of the RENA mark itself, is likely to cause, and already has caused, confusion and mistake, and is likely to, and has deceived Rena's sales representatives and the consuming public as to the affiliation, connection, or association of defendants with plaintiffs, or as to the origin, sponsorship, or approval by plaintiffs of defendants' goods, services and commercial activities.

61. Defendants Lin, Sis-Joyce, and Ko are also liable for contributory common law trademark infringement as suppliers of infringing goods to Simone. Lin, Sis-Joyce, and Ko have supplied infringing "ARëna" products to defendant Simone even after they knew, or had reason to know, that defendant Simone was infringing plaintiffs' RENA BIOTECHNOLOGY mark. Defendants Lin, Sis-Joyce, and Ko had knowledge or constructive knowledge of Simone's infringing actions based on their management and control over the distribution and promotion of the infringing "ARëna" products, as well as Simone's status as an active Sis-Joyce member. As alleged herein, Simone's use of the purported "ARëna," "aRena," "aRENA," and "NEW! ARËNA ACTIVATION ENERGY SERUM" marks, as well as his use of the RENA mark itself, is likely to cause, and already has caused,

confusion and mistake, and is likely to, and has deceived Rena's sales representatives and the consuming public as to the affiliation, connection, or association of defendants with plaintiffs, or as to the origin, sponsorship, or approval by plaintiffs of the infringing goods, services and commercial activities.

62. Defendants' direct and contributory infringement of plaintiffs' marks has enabled them to benefit unfairly from plaintiffs' reputation and success, thereby giving defendants' business a market share and/or commercial value that they would not otherwise enjoy.

63. Defendants' direct and contributory infringement of plaintiffs' trademarks as described herein has been and continues to be intentional, willful, and without regard for plaintiffs' rights. Plaintiffs have sustained damages as a direct and proximate result of defendants' infringement of plaintiffs' trademarks as alleged herein.

64. Plaintiffs will suffer and are suffering irreparable harm from defendants' direct and contributory infringement of the RENA mark insofar as plaintiffs' invaluable good will and market share is being eroded by defendants' continuing infringement. Plaintiffs have no adequate remedy at law to compensate them for the loss of business reputation, market share, sales representatives, customers, good will, and confusion of potential customers flowing from defendants' direct and contributory infringing activities. Plaintiffs are entitled to a preliminary and permanent injunction against defendants' continuing infringement of plaintiffs' RENA trademark. Unless enjoined, defendants will continue their infringing conduct.

THIRD CLAIM FOR RELIEF

(Trademark Cancellation by Rena and Kathryn Li against Lin)

(15 U.S.C. § 1064)

65. Plaintiffs Rena and Kathryn Li incorporate and re-allege paragraphs 1-64 of this Complaint.

66. Kathryn Li is the owner, and Rena the exclusive licensee, of the federally registered RENA BIOTECHNOLOGY trademark. In addition, they are the owner and licensee, respectively, of the RENA mark which, like RENA BIOTECHNOLOGY, is highly distinctive and fanciful, and enjoys a strong secondary meaning within the organic, natural anti-aging ingestible products market.

67. On July 26, 2011, defendant Lin obtained registration of a purported, "NEW! ARËNA ACTIVATION ENERGY SERUM" mark (the "Infringing Mark") pursuant to Certificate of Registration No. 4,002,069 as a word and design mark for use with "body and beauty care cosmetics."

68. The Infringing Mark is being used by defendants to misrepresent the source of the goods defendants sell in connection with the use of that mark.

69. Plaintiffs Rena and Kathryn Li are, accordingly, entitled to an order directing that the Infringing Mark be, and hereby is, canceled.

FOURTH CLAIM FOR RELIEF

(Direct and Contributory Lanham Act Section 43(a) violation by Rena and Kathryn Li against all Defendants)

(15 U.S.C. § 1125(a))

70. Plaintiffs Rena and Kathryn Li incorporate and re-allege paragraphs 1-69 of this Complaint.

71. Defendants' misconduct as alleged herein is likely to cause, and is causing, confusion between defendants' products and Rena's products in that consumers are likely to, and do, confuse defendants' products as originating or affiliated with Rena, including in that defendants have used and are using (i) the purported ARëna, aRena, aRENA and NEW! ARENA ACTIVATION ENERGY SERUM marks; (ii) Rena's RENA and RENA BIOTECHNOLOGY marks; (iii) references to the "new Rena"; (iv) photographs of Rena's owner and Chief Executive Officer; (v) a letter authored by Rena's president; (vi) brochures, fliers

and websites that heavily copy the look and feel, photographs, illustrations, and textual material from Rena's brochures, fliers and website; (vii) virtually identical product bottles copied from Rena; and (viii) websites that substantially copy the content of Rena's official website.

72. Defendants have deliberately adopted, imitated and mimicked the trade dress and trademarks of plaintiff's products, packaging and advertising. Defendants' actions have been, and are being, undertaken with the intent to deceive consumers, cause confusion and mistake, and interfere with the ability of consumers to identify the source of goods by trademark, appearance and packaging. Through their conduct, defendants unlawfully exploit the goodwill and reputation that plaintiffs Rena and Kathryn Li have developed in their marks and business and defendants are unlawfully deriving benefit therefrom.

73. Defendants' acts alleged herein are without the consent of plaintiffs Rena and Kathryn Li and constitute the use of terms, symbols, devices or combinations thereof that are false or misleading within the meaning of 15 U.S.C. § 1125 and are likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association, or as to the origin, sponsorship, or approval, of defendants' goods by Rena and/or Kathryn Li within the meaning of 15 U.S.C. § 1125. Defendants' actions discussed and alleged herein also constitute unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Plaintiffs have been, and are being, damaged by defendants' acts.

74. Defendants' conduct has been intentional and willful, and is specifically calculated to trade on the goodwill that plaintiffs Rena and Kathryn Li have developed in their successful RENA BIOTECHNOLOGY products. By the aforesaid acts, including without limitation the deliberate use of Rena's unique and distinctive bottle trade dress, repeated references to "Rena" products, and use of written and photographic elements portraying Rena's owner and Chief Executive Officer in connection with goods sold and distributed in interstate commerce,

defendants have infringed, and are likely to continue to infringe, plaintiffs' rights in their RENA and RENA BIOTECHNOLOGY products.

75. Defendants Lin, Sis-Joyce, and Ko are also liable for contributory trademark infringement as suppliers of infringing goods to defendant Simone. Lin, Sis-Joyce, and Ko have supplied infringing "ARëna" products to defendant Simone even after they knew, or had reason to know, that defendant Simone was infringing plaintiffs' trademarks and trade dress. Defendants Lin, Sis-Joyce, and Ko had knowledge or constructive knowledge of Simone's infringing actions, as alleged herein, based on their management and control over the distribution and promotion of the infringing "ARëna" products, as well as Simone's status as an active Sis-Joyce member.

76. Lin, Sis-Joyce, and Ko acted intentionally and willfully in providing products to Simone for use in his infringing acts. These acts included, without limitation, the deliberate use of Rena's unique and distinctive bottle trade dress, repeated references to "Rena" products, and use of written and photographic elements portraying Rena's owner and Chief Executive Officer in connection with goods sold and distributed in interstate commerce. Each such act infringed plaintiffs' rights in their RENA and RENA BIOTECHNOLOGY products.

77. Plaintiffs Rena and Kathryn Li have been damaged by, and defendants have profited from, defendants' wrongful conduct in an amount to be proven at trial.

78. For each act of direct and contributory infringement, plaintiffs Rena and Kathryn Li are entitled to recover their actual damages as well as defendants' profits from such infringement.

79. Plaintiffs are suffering and will suffer irreparable harm from defendants' direct and contributory acts of false designation of origin or affiliation. Plaintiffs also have been, and will continue to be, irreparably harmed and damaged by defendants' conduct in that their invaluable goodwill is being eroded by

defendants' continuing acts of infringement. Plaintiffs have no adequate remedy at law to compensate them for the loss of business reputation, customers, market position, goodwill, and confusion of potential customers flowing from defendants' unlawful activities. Plaintiffs are therefore entitled to preliminary and permanent injunctive relief to stop defendants' continuing acts of false designation of origin or affiliation and continued infringement of the Activation Energy Serum bottle trade dress, product brochures, product fliers, website, and trademarks.

80. Because defendants' actions have been committed with the intent to damage plaintiffs Rena and Kathryn Li and to confuse and deceive the public, plaintiffs are entitled to recover treble or actual damages, and award of costs, and, this being an exceptional case, reasonable attorneys' fees pursuant to 15 U.S.C. § 1117(a).

FIFTH CLAIM FOR RELIEF

(Copyright Infringement by Rena against all Defendants)

81. Rena incorporates and re-alleges paragraphs 1-80 of this Complaint.

82. Rena is the owner of valid copyrights in works that are fixed in tangible media of expression, including in its website. These copyrights include, without limitation, those that are the subject of registration numbers TXu 1-815-587 and TXu 1-815-464.

83. Defendants Sis-Joyce, Lin, Simone, Ko, and DOES 3-10 have reproduced, created derivative works from and otherwise infringed upon Rena's exclusive rights in its protected works without Rena's authorization. Defendants' acts violate Rena's exclusive rights under the Copyright Act, including without limitation Rena's exclusive rights to reproduce its copyrighted works and to create derivative works from its copyrighted works, as set forth in 17 U.S.C. §§ 106 and 501.

84. Defendants' infringement (and substantial contributions to the infringement) of Rena's copyrighted works is and has been knowingly made without

Rena's consent and for commercial purposes and the direct financial benefit of defendants. On information and belief, defendants also have deliberately failed to exercise their right and ability to supervise the infringing activities of others within their control to refrain from infringing Rena's copyrighted works and have failed to do so in order to deliberately further their significant financial interest in the infringement of Rena's copyrighted works. Accordingly, defendants have engaged in direct, contributory and vicarious infringement of Rena's copyrighted works.

85. Defendants' infringement of Rena's copyrighted works has been willful and intentional, engaged in with no regard for Rena's lawful rights.

86. By virtue of defendants' infringing acts, Rena is entitled to recover its actual damages plus defendants' profits, its costs of suit and attorneys' fees, statutory damages, punitive damages, and all other relief permitted under the Copyright Act.

87. Defendants' actions have caused and will continue to cause irreparable damage to Rena, for which Rena has no remedy at law. Unless defendants are restrained from continuing their infringement of Rena's copyrights, these injuries will continue to occur in the future. Accordingly, Rena is entitled to preliminary and permanent injunctive relief restraining defendants from further infringement.

SIXTH CLAIM FOR RELIEF

(Anticybersquatting Consumer Protection Act Violation by Rena and Kathryn Li against all Defendants)

(15 U.S.C. § 1125(d))

88. Rena and Kathryn Li incorporate and re-allege paragraphs 1-87 of this Complaint.

89. Kathryn Li's and Rena's RENA and RENA BIOTECHNOLOGY marks were distinctive when Defendants registered their www.RenaSkin.com and www.ArenaSkin.com domain names (the "Cyberpirated Domain Names").

90. The Cyberpirated Domain Names are confusingly similar to Rena's and Kathryn Li's RENA and RENA BIOTECHNOLOGY trademarks used for skincare products.

91. Defendants registered their domain names in a bad faith attempt to profit from the RENA and RENA BIOTECHNOLOGY marks, as evidenced by (i) defendants' deliberate attempt to create confusion with Rena's products through defendants' deliberate references to "American Rena" calculated to cause confusion among Internet users familiar with Rena's www.AmericanRena.com website; (ii) the fact that defendants' domain names do not consist of defendants' legal names or names by which they are otherwise commonly identified; (iii) defendants' lack of any prior use of their domain names in connection with a bona fide offering of any goods or services; (iv) defendants' lack of any bona fide noncommercial or fair use of the RENA or RENA BIOTECHNOLOGY marks in a site accessible under their domain names; (v) defendants' intent to divert consumers from Rena's online location to sites accessible under their domain names that can harm, and are harming, the goodwill represented by the RENA and RENA BIOTECHNOLOGY marks for commercial gain by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of defendants' sites; and (vi) defendants' provision of material and misleading false contact information when applying to register their domain names and their intentional failure to maintain accurate contact information.

92. Defendants had and have no reasonable grounds to believe that their uses of the Cyberpirated Domain Names are fair uses or otherwise lawful.

93. Rena and Kathryn Li are therefore entitled to the entry of an order of forfeiture or cancellation of the Cyberpirated Domain Names or requiring the transfer of the domain names to Kathryn Li.

94. Pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117, plaintiffs Rena and Kathryn Li are entitled to an award of statutory damages of

$100,000 against Lin, Simone, or Ko, or, in the alternative, to recover defendants' profits, all damages sustained by Rena and Kathryn Li, and costs of the action and, this being an exceptional case, reasonable attorneys' fees.

SEVENTH CLAIM FOR RELIEF

(Trade Secret Misappropriation by Rena against all Defendants)

95. Rena incorporates and re-alleges Paragraphs 1-94 of this Complaint.

96. Prior to defendants' unlawful acts complained of herein, Rena had a multi-tiered sales organization comprising nearly 100,000 independent sales agents worldwide. The structure of Rena's sales force can be roughly analogized to that of an army in which a large number of privates report to a somewhat smaller number of sergeants who report to a somewhat smaller number of lieutenants who report to a somewhat smaller number of captains who report to fewer colonels who, in turn, report to still fewer generals. In such a structure, higher ranking officers exercise control, either directly or indirectly, of more persons than are controlled by lower ranking officers. Similarly, in a multi-tiered sales force, persons in the higher tiers have control of more sales personnel than persons in lower tiers enjoy.

97. For this reason, the identities and locations of Rena's sales representatives within its multi-level sales structure is a closely-guarded trade secret. The identities of the persons in the upper levels of Rena's sales structure and knowledge of the identities of the sales persons subordinate to each of them would obviously be extremely valuable to any person or entity seeking to compete in the marketplace with Rena. For that reason, Rena has always exercised reasonable efforts to protect the secrecy of the identities of the persons in its sales structure and, until recently, that information had never been known or available to any competitor of Rena or to any person or entity that could derive financial benefit from its disclosure or use.

98. As persons who enjoyed positions of trust and confidence within Rena's sales force, defendants Lin, Simone, and Ko understood that such

information was highly confidential and trade secret and was disclosed to them under circumstances giving rise to a duty to maintain the secrecy, and limit the use, of such information.

99. In derogation of their obligation to maintain the secrecy of Rena's 100,000-person sales organization, Lin, Simone, and Ko have, instead, used and are using such information for the benefit of Sis-Joyce and have now poached a very substantial portion of Rena's sales force. Accordingly, Rena is entitled to the entry of an injunction prohibiting further use of its trade secrets; a preliminary and permanent injunction prohibiting Sis-Joyce, Lin, Simone, and Ko from continuing to benefit from their misappropriation of Rena's trade secrets; an award of Rena's actual loss caused by the misappropriation; an award of defendants' unjust enrichment caused by the misappropriation and not taken into account in computing the damages for actual loss; an award of exemplary damages based on defendants' willful and malicious misappropriation of Rena's trade secrets; and an award of reasonable attorneys' fees and costs.

EIGHTH CLAIM FOR RELIEF

(Interference with Prospective Economic Advantage by Rena against all Defendants)

100. Rena incorporates and re-alleges Paragraphs 1-97 of this Complaint.

101. Rena's economic relationships with its 100,000-member sales force provided prospective economic benefits for Rena.

102. Defendants knew and should have known of Rena's economic relationships with its sales representatives and that those economic relationships provided prospective economic benefits for Rena.

103. Defendants committed intentional acts that were designed, and which they knew and should have known were substantially likely, to result in a disruption of Rena's business and to impose a burden upon Rena's economic relationships with it sales representatives. Those actions were independently

wrongful and included, without limitation, the use of false representations that Rena had been acquired by Sis-Joyce and/or "ARëna;" false representations that Rena had become "ARëna;" and the use of Rena's highly confidential and trade secret information concerning the identities and levels of the persons in its 100,000-person, multi-level sales force.

104. But for the conduct of defendants, Rena's economic relationships with its sales force would have resulted in economic benefits to Rena.

105. As a result of the aforementioned conduct, Rena suffered damages in an amount to be proved at trial, but which include the loss of customers, sales representatives, sales, good will, and valuable proprietary and trade secret information. Moreover, Defendants' misconduct will continue unabated barring relief, and Rena is therefore entitled to preliminary and permanent injunctive relief to prevent further such misconduct.

106. The aforementioned conduct was despicable, wanton, oppressive, malicious, duplicitous, and performed with willful and conscious disregard of Rena's rights and with the intent to deprive Rena of those rights. Accordingly, Rena is entitled to an award of punitive and exemplary damages.

NINTH CLAIM FOR RELIEF

(Trade Libel by Rena against all Defendants)

107. Plaintiff Rena incorporates and re-alleges Paragraphs 1-106 of this Complaint.

108. Defendants have each individually and in combination made statements concerning Rena's ownership, existence, corporate name, trademarks, products and customers that were false, inaccurate, misleading, deceptive and untrue.

109. Defendants knew that such statements were false, inaccurate, misleading, deceptive and untrue and knew and acted with reckless disregard of the truth of those statements, both at the times the statements were made and thereafter.

110. As a direct and proximate result of such statements, Rena's customers, sales representatives, and accounts had been induced to cease, reduce, or diminish their business relationships, dealings, and orders placed with Rena.

111. As a result of the aforementioned conduct, Rena has suffered damages in an amount which has not yet been ascertained but which includes the loss of Rena's customers, sales representatives, sales, and good will.

112. The aforementioned conduct was despicable, wanton, oppressive, malicious, duplicitous, and performed with willful and conscious disregard of Rena's rights and with the intent to deprive Rena of its rights. Accordingly, Rena is entitled to an award of punitive and exemplary damages.

TENTH CLAIM FOR RELIEF

(False Light Invasion of Privacy by Kathryn Li and Robert Milliken against all Defendants)

113. Plaintiffs Kathryn Li and Robert Milliken incorporate and re-allege paragraphs 1-112 of this Complaint.

114. Defendants' use of photographs of plaintiffs Kathryn Li and Robert Milliken, as well as the use of the letter signed by Mr. Milliken, on websites advertising and promoting defendants' purported "ARëna" products constitutes a calculated falsehood intended to deceive persons viewing the websites into believing that plaintiffs have somehow sponsored, endorsed, produced, or approved defendants' products.

115. In appropriating plaintiffs' likenesses, correspondence, and names, defendants have acted with actual malice in falsely portraying plaintiffs as having created or approved defendants' products when, in fact, the opposite is true. Defendants' misappropriation of plaintiffs' images, names, and letter was done maliciously as part of a calculated scheme to misappropriate plaintiffs' business by confusing and misleading plaintiffs' sales leaders, sales representatives, customers, and consumers of natural, organic topical and ingestible skin care products.

116. The above invasion of plaintiffs' privacy was wrongful and has caused both humiliation and financial harm to plaintiffs.

117. The acts alleged above were performed without plaintiffs' consent and resulted in damage to plaintiffs in an amount to be proved at trial. Plaintiffs are also entitled to profits attributable to defendants' unauthorized use of their likenesses, names and letter.

118. Upon information and belief, defendants have engaged in the conduct alleged above with oppression, fraud and malice. Accordingly, plaintiffs are entitled to an award of punitive and exemplary damages in an amount to be proved at trial.

ELEVENTH CLAIM FOR RELIEF

(Violation of Right of Publicity by Kathryn Li and Robert Milliken against all Defendants)

(*California Civil Code* § 3344 and the Common Law)

119. Plaintiffs Kathryn Li and Robert Milliken incorporate and re-allege paragraphs 1-118 of this Complaint.

120. Through their talent and hard work developing natural, organic topical and ingestible skin care products, plaintiffs Kathryn Li and Robert Milliken have developed and earned considerable good will and commercial value in their names, images, and likenesses among persons selling, distributing and purchasing natural, organic topical and ingestible skin care products. Their likenesses convey a sense of integrity and scientific accomplishment.

121. Plaintiffs never agreed to allow the use of their names or likenesses in connection with the marketing, advertising, distribution or sale of defendants' products.

122. By using plaintiffs' names and likenesses in conjunction with the advertising of their products, defendants have knowingly misappropriated plaintiffs' names and likenesses for commercial gain.

123. The acts alleged above constitute a violation of *California Civil Code* § 3344 and plaintiffs' common law right of publicity.

124. As a direct and proximate result of defendants' acts alleged above, plaintiffs have been damaged in an amount to be proved at trial. Plaintiffs are also entitled to all profits attributable to defendants' unauthorized use of their names and likenesses.

125. Pursuant to *California Civil Code* § 3344(a), plaintiffs are also entitled to recover reasonable attorneys' fees.

126. Upon information and belief, defendants have engaged in the conduct alleged above with oppression, fraud and malice. Accordingly, plaintiffs are entitled to an award of punitive and exemplary damages in an amount to be proved at trial.

TWELFTH CLAIM FOR RELIEF

(California Statutory Unfair Competition by Rena against all Defendants)

127. Plaintiff Rena incorporates and re-alleges paragraphs 1-126 of this Complaint.

128. Defendants' acts described above constitute fraudulent and unlawful business practices as defined by *California Business & Profession Code* § 17200 et seq.

129. Plaintiffs have valuable and protectable rights in their RENA and RENA BIOTECHNOLOGY word and design marks. Those marks are inherently distinctive, and, through plaintiffs' use, have come to be associated in the market solely with Rena, which is well known as the source of the products on which they are used.

130. Defendants' sale of their infringing products is likely to cause confusion as to the source of their Activation Energy Serum, and other products, and is likely to cause consumers and sales representatives to be confused or mistaken

into believing that there is a relationship between defendants and Rena, or that defendants' products are affiliated with or sponsored by Rena.

131. Defendants' use of deceptively similar Internet domain names for sites that are copied heavily from and derivative of Rena's official website is likely to cause others to be confused or mistaken into believing that there is a relationship between defendants and Rena, or that defendants' products are affiliated with, or sponsored by, Rena. The fraudulent business practices of Defendants, including their cybersquatting of domain names, infringement of Rena's copyrighted materials, theft and use of Rena's trade secret information, and intentional interference with Rena's prospective economic advantage further constitute unfair competition and fraudulent business practices.

132. As a direct and proximate result of defendants' wrongful conduct, Rena and Kathryn Li have been injured in fact, and have lost money and profits, and such harm will continue unless defendants' acts are enjoined by the Court. Rena and Kathryn Li have no adequate remedy at law for defendants' continuing violation of their rights.

133. Defendants should be required to restore to Rena and Kathryn Li any and all profits earned as a result of their unlawful and fraudulent actions, or provide Rena and Kathryn Li with any other restitution or relief as the Court deems appropriate.

THIRTEENTH CLAIM FOR RELIEF

(California Common Law Unfair Competition by Rena against all Defendants)

134. Plaintiff Rena incorporates and re-alleges paragraphs 1-133 of this Complaint.

135. Plaintiff's genuine RENA products have acquired a secondary meaning among leaders, sales representatives, and consumers in the natural, organic topical and ingestible skin care products market as associated with, and emanating from, Rena.

136. Defendants, through the marketing of their directly competing products, have unfairly imitated the name and appearance of Rena's products and, in doing so, have competed unfairly with Rena.

137. Rena is, therefore, entitled to an award of its actual damages and, because defendants acted with oppression, fraud, and malice, Rena is further entitled to an award of punitive and exemplary damages in an amount to be proved at trial.

FOURTEENTH CLAIM FOR RELIEF

(Violation of the Racketeer Influenced and Corrupt Organizations Act by Rena against all Defendants)

(18 U.S.C. §§ 1962(c) and 1964(c))

138. Plaintiff Rena incorporates and re-alleges paragraphs 1-137 of this Complaint.

139. Beginning from approximately 2008 through the filing of this Complaint, and continuing into the future, in the Central District of California and elsewhere, Defendants Lin, Simone, Ko, and Does 3-10 have, directly and indirectly, knowingly participated in the conduct of, and operated and managed, Sis-Joyce, an enterprise by which they are employed or associated and whose conduct and activities affect interstate or foreign commerce (the "Criminal Enterprise"), through a pattern of racketeering activity, and in so doing injured Rena in its business and property. Defendants' actions include multiple, related acts in violation of: 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 2319(a) and 17 U.S.C. § 506(a) (criminal copyright infringement), 18 U.S.C. § 2320 (trafficking in counterfeit goods).

140. The predicate acts alleged herein occurred after the effective date of 18 U.S.C. §§ 1961 et seq., and the last such act occurred within 10 years after the commission of a prior act of racketeering activity. These racketeering activities include repeated acts of:

(a) Criminal Copyright Infringement. Defendants Lin, Simone, Ko, and Does 3-10 willfully infringed and continue to willfully infringe Rena's copyrights, including without limitation with respect to copyrighted material on the AmericanRena.com website, for purposes of commercial advantage and private financial gain, all in violation of 18 U.S.C. § 2319(a) and 17 U.S.C. § 506(a)(1)(a), (c), as alleged with greater particularity in the foregoing paragraphs.

(b) Trafficking in Counterfeit Goods. Defendants Lin, Simone, Ko, and Does 3-10 intentionally trafficked and continue to intentionally traffic in goods while knowingly using a counterfeit mark on and in connection with such goods, and attempted and conspired to do so, including by selling non-genuine products bearing the RENA and RENA BIOTECHNOLOGY marks and by using the RENA and RENA BIOTECHNOLOGY marks, including on packaging, to sell goods bearing the "ARena" label in a manner likely to deceive and cause mistake and confusion, all in violation of 18 U.S.C. § 2320(a)(1, 2), as alleged with greater particularity in the foregoing paragraphs.

(c) Mail and Wire Fraud. The Criminal Enterprise was and is engaged in a scheme to defraud involving the conduct set forth herein, including by willfully infringing Rena's intellectual property rights, counterfeiting Rena's goods, misleading consumers and making false and fraudulent statements to Rena members, including on the Internet, all in an effort to unlawfully hijack Rena's business, property and rights. Defendants Lin, Simone, Ko, and Does 3-10, having devised such a scheme to defraud, did for the purpose of furthering and executing this scheme transmit and cause to be transmitted by means of wire communications in interstate or foreign commerce, writing, signs, signals, pictures and sound, and deposit or cause to be deposited matters or things to be sent or delivered by mail and by commercial interstate carriers, and take or receive matters or things therefrom, in violation of 18 U.S.C. § 1341,18 U.S.C. § 1343, 18 U.S.C. § 1346, and 18 U.S.C. § 2, including without limitation by transmitting documents in furtherance of the

fraudulent scheme including the email messages attached hereto as Exhibit A, by providing false information when registering the fraudulent and infringing renaskin.com website, by causing the publication on the Internet of the fraudulent and infringing renaskin.com and arenaskin.com websites that among other things make counterfeit use of the RENA and RENA BIOTECHNOLOGY marks, by willfully infringing Rena's copyrights and falsely purporting to advertise and sell "Genuine American Rena" products, and by causing the publication on YouTube of fraudulent and infringing videos, uploaded under the name "tvstripe1" on or about June 2, 2010 and August 25, 2011, that among other things make counterfeit use of the RENA and RENA BIOTECHNOLOGY marks and products and purport to advertise and sell genuine American Rena products, but direct consumers to the fraudulent and infringing renaskin.com website.

141. Rena has been injured in its business or property as a direct and proximate result of Defendants' violations of 18 U.S.C. § 1962(c), including injury by reason of the predicate acts constituting the pattern of racketeering activity, as alleged with greater particularity in the foregoing paragraphs.

142. As a result of Defendants' violations of 18 U.S.C. § 1962(c), Rena has suffered substantial damages, in an amount to be proved at trial. Pursuant to 18 U.S.C. § 1964(c), Rena is entitled to recover treble its general and special compensatory damages, plus interest, costs and attorneys fees, incurred by reason of Defendants' violations of 18 U.S.C. § 1962(c).

FIFTEENTH CLAIM FOR RELIEF

(Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act by Rena against all Defendants)

(18 U.S.C. §§ 1962(d) and 1964(c))

143. Plaintiff Rena incorporates and re-alleges paragraphs 1-142 of this Complaint.

144. Beginning from approximately 2008 through the filing of this Complaint, and continuing into the future, in the Central District of California and elsewhere, Defendants Lin, Simone, Ko, and Does 3-10 and others acting in concert with or on behalf of them, knowingly, willfully, and unlawfully, did conspire, combine, confederate and agree together to violate 18 U.S.C. § 1962(d) by furthering, promoting, and facilitating the Criminal Enterprise as detailed above, in violation of 18 U.S.C. § 1962(c).

145. In furtherance of this unlawful conspiracy and its multiple objects, as alleged herein, Defendants Lin, Simone, Ko, and various co-conspirators committed numerous overt acts, including but not limited to those set forth above.

146. Rena has been injured in its business or property as a direct and proximate result of Defendants' violations of 18 U.S.C. § 1962(d), including injury by reason of the predicate acts constituting the pattern of racketeering activity. As a result of the conspiracy between and among Defendants to violate 18 U.S.C. § 1962(c), Rena has suffered substantial damages, in an amount to be proved at trial. Pursuant to 18 U.S.C. § 1964(c), Rena is entitled to recover treble its general and special compensatory damages, plus interest, costs and attorneys fees, incurred by reason of Counter-defendants' violations of 18 U.S.C. § 1962(d).

SIXTEENTH CLAIM FOR RELIEF

(Unjust Enrichment by Rena against all Defendants)

147. Plaintiff Rena incorporates and re-alleges paragraphs 1-146 of this Complaint.

148. As a direct and proximate result of the misconduct set forth above, defendants have been unjustly enriched, to Rena's detriment. Rena seeks a worldwide accounting and disgorgement of all ill-gotten gains and profits resulting from defendants' inequitable activities.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs American Rena International Corp., WanZhu, "Kathryn" Li and Robert M. Milliken demand judgment:

1. That defendants, their agents, servants and employees, and all persons acting in concert with them, be preliminarily and permanently enjoined from engaging in the unlawful conduct set forth herein, including in that they be enjoined from, directly or indirectly infringing plaintiff Rena's RENA and RENA BIOTECHNOLOGY trademarks; making any commercial use or use in commerce of or references to the RENA or RENA BIOTECHNOLOGY marks; making any commercial use or use in commerce of or references to the "ARëna," "aRena," "aRENA," or "NEW! ARËNA ACTIVATION ENERGY SERUM" marks; making any commercial use or use in commerce of or references to "New Rena" or "Rena;" making any commercial use or use in commerce of or references to photographs or images of plaintiffs Li and/or Milliken; making any commercial use or use in commerce of or references to any of Rena's copyrighted materials, including those materials that appear on the AmericanRena.com website; making any commercial use or use in commerce of or references to any brochures, fliers, or websites that misappropriate the content or use any photographs, illustrations, or textual material, or that copy the look and feel, of Rena's brochures, fliers and website; making any commercial use or use in commerce of or references to product bottles or containers that are confusingly similar to product bottles or containers used by Rena, or any trade dress employed by Rena; and from otherwise engaging in unfair competition with Rena or interfering improperly with any prospective economic advantage enjoyed by Rena, including by providing misleading or false information to Rena customers.

2. An order directing the United States Patent and Trademark Office to cancel the purported "NEW! RËNA ACTIVATION ENERGY SERUM" mark registered pursuant to Certificate of Registration No. 4,002,069.

3. An order directed to Network Solutions. Inc., directing that ownership of the www.Renaskin.com and www.Arenaskin.com domain names be transferred to Li.

4. That plaintiffs Li and Milliken be awarded damages for the false-light invasions of their privacy and violations of their rights of publicity.

5. That Rena recover its actual damages and lost profits, and that it be awarded an amount equal to defendants' unjust enrichment to the extent that such unjust enrichment is not reflected in the award of damages, and that a constructive trust in favor of Rena be imposed over defendants' ill-gotten gains and profits.

6. That defendants be ordered to pay punitive and exemplary damages in a sum sufficient to punish and make an example of them, and deter them and others from similar wrongdoing.

7. That defendants be ordered to pay double damages due to their willful and malicious misappropriation of Rena's trade secrets.

8. That defendants be ordered to pay trebled general and special damages, together with interest thereon, costs and attorneys' fees, incurred by reason of their violations of 18 U.S.C. §§ 1962(c) - (d).

9. That defendants pay to plaintiffs the full cost of this action and plaintiffs' attorneys' fees and investigator's fees.

10. That plaintiffs have such other and further relief as the Court may deem just and proper.

DATED: March 26, 2013

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Bruce E. Van Dalsem
David W. Quinto
B. Dylan Proctor

By _____
Bruce E. Van Dalsem
David W. Quinto
B. Dylan Proctor
Attorneys for American Rena International Corp., WanZhu "Kathryn" Li, and Robert M. Milliken

IT

---- Forwarded Message ----
From: virginia wu <virginiachu7@yahoo.com>
To: virginiachu7@yahoo.com
Sent: Sunday, February 13, 2011 12:51 AM
Subject: New Rena Company is lunched

Dear Arena gold members,

Bank: CHASE BANK

SWift code: CHASUS33
Account: 946067170
Company: Sis-Joyce International Co.LTD

New Rena product has arrived. The product name called Arena. Company will open on the end of the February. Member can reorder the product now.
Please deposit the premium of US$1527.39 (**No Tax - Promotion**) to the above Bank account. and email to me virginiachu7@yahoo.com for indicating the member's old ID#, Name, Tel#, Address. Company will ship the order to your address. Package including 10 bottles of concentrate and 2 empty bottles. The member in out of state will receive 11 bottles of concentrate.
I will provide all the member's order record to the Company. When the Company computer system are ready around begining of the March, All member's commission will be paid.
So, please grab this chance, I believe we can do better, bigger and
easier at this time. Any questions please call me or email me. Thank you. 626-329-3991

在加州的會員訂貨須知:

10瓶50倍的濃縮液, 沒有外面的紙合包裝, 加上二瓶30ml的能量空瓶.
外面的紙合包裝以後會補發給会員.
目前促銷中, 含稅只須付 US$ 1,527.39元. 請直接存入上面的Account. 存完後請 E-mail給virginiachu7@yahoo.com 請告知您在舊的ID號碼#, 姓名, 电話, 及郵寄地址.
公司馬上會把貨郵寄到您要的地址, 必須要有人簽收.

外州及其它國家的會員訂貨須知:

11瓶50倍的濃縮液, 沒有外面的紙合包裝, 加上二瓶30ml的能量空瓶.

EXHIBIT A 40

外面的紙合包裝以後會補發給会員.
目前促銷中. 只須付 US$ 1,527.39元.(就多了一瓶) 請直接存入上面的Account.
存完後請 E-mail給 virginiachu7@yahoo.com 請告知您在的舊ID號碼 #,
姓名,电話,及郵寄地址. 公司馬上會把貨郵寄到您要的地址, 必須要有人簽收.

讓我集合在一起報備給公司,待电腦系統都完成後, 公司馬上會把獎金撥下來.

Best regard,
Virginia Wu
626-329-3991

EXHIBIT A

IT

---- Forwarded Message ----
From: virginia wu <virginiachu7@yahoo.com>
To: Margaux Cheng <regency898@yahoo.com.tw>; ROB SIMONE <robsimonetalks@yahoo.com>; Lisa Canada <lisa_ma@yahoo.com>
Cc: Kavina Chang <globalfreestore@yahoo.com>; Simon Ma Rena <simonma7@yahoo.com>
Sent: Wednesday, March 16, 2011 11:42 AM
Subject: Arena needs your information

Dear all,

It is good to hear that Arena (2nd generation of Rena) is finally open for our members.Now all we need to do is go to the back office key in your personal information. Later we will notify you how to activate your account for the member who has ordered product.

Go to sisjoyce.com

go to office => member log in (please add 6 before your member ID and password)
go to Manage my account => Personal information (Rember ID# is your Social Security #)

Please call me if you have any questions.

Have a good day
Virginia

EXHIBIT A

42

IT

----- Forwarded Message -----
From: virginia wu <virginiachu7@yahoo.com>
To: ROB SIMONE <robsimonetalks@yahoo.com>; Lisa Canada <lisa_ma@yahoo.com>; Jane Wang Rena <tojxw@yahoo.com>; Kavina Chang <globalfreestore@yahoo.com>; Tina Rena <tinalee4rena@yahoo.com>; Vanessa Canada <vanessawong_ca@yahoo.ca>; Wendy Li Rena <syli233@hotmail.com>; Margaux Cheng <regency898@yahoo.com.tw>
Sent: Monday, February 21, 2011 12:54 AM
Subject: Fw: Re : Very Exciting Update News !

Dear All Members :

The Top Leader, Annie Lin
She has very exciting news for everyone!
On the Feb-26-11 Pm 3:00-6:00
Feb-27-11 Pm 1:00-5:00

All members that attend will receive complementary gifts and also be eligible for a raffle for the patented micro-molecular Activation energy bottle.
Special thanks to Alice Hsu for providing us with the meeting location!

感謝我們的大 Leader Annie Lin 將專程給我們帶來令人興奮的好消息.
會議的時間如下.

2月26日Pm 3:00-6:00
2月27日Pm 1:00-5:00

我們有抽獎活动, 獎品非常豐富, 達到千元以上.
其中包括有專利的能量瓶.

EXHIBIT A

所有來的會員將都會有禮物贈送.

我們特別在此感謝Alice Hsu她提供我們会議場所.
Address Located: 聖約翰美容學院

9526 Las Tunas Dr
Temple City CA 91780

On Las Tunas between Temple city & Rosemead .
It is located on primrose Ave right in front
of the Mandarin Noodle Deli.

Best Regard
Virginia

EXHIBIT A

--- On **Sun, 6/12/11, Annie Lin <annierenausa@yahoo.com>** wrote:

From: Annie Lin <annierenausa@yahoo.com>
Subject: Fw: New Powerpoints
To: "Simon Ma" <simonma7@yahoo.com>, virginiachu7@yahoo.com, "Christine Ko" <arenausa7@yahoo.com>
Date: Sunday, June 12, 2011, 2:34 PM

--- On **Sun, 6/12/11, Annie Lin <annierenausa@yahoo.com>** wrote:

From: Annie Lin <annierenausa@yahoo.com>
Subject: New Powerpoints

EXHIBIT A

LEON E. JEW (SBN: 219298)
JEW AND ASSOCIATES
5776 Stoneridge Mall Rd., Suite 288
Pleasanton, CA 94588
Tel: (925) 463-3288
Fax: (925) 463-3218
Email: Ljewpt@yahoo.com

Attorneys for Defendants:
ALICE LIN; SIS-JOYCE INTERNATIONAL CO. LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

American Rena International Corp., a California corporation; WanZhu "Kathryn" Li, an individual; and Robert M. Milliken, an individual, Plaintiffs, *vs.* Sis-Joyce International Co. Ltd., a California corporation; Alice "Annie" Lin, an individual; and Virginia Wu, an individual, Defendants.	Civil Action No. CV12-06972 DMG (JEMx) **ANSWER AND COUNTERCLAIMS OF DEFENDANTS ALICE LIN AND SIS-JOYCE INTERNATIONAL CO. LTD.** **JURY TRIAL DEMANDED**
Sis-Joyce International Co. Ltd., a California corporation; Alice Lin, an individual, Counter-claimants, *vs.* American Rena International Corp., a California corporation; WanZhu "Kathryn" Li, an individual, and Robert Millikan, and individual Counter-defendants.	

I. ANSWER

The answering defendants, Alice Lin (hereinafter as "Lin") and Sis-Joyce International Co. Ltd. (hereinafter as "Sis-Joyce"), hereby respond to the Complaint of American Rena International Corporation, Wanzhu Li and Robert M. Millken (together "Plaintiffs") as follows:

NATURE OF THE ACTION

1. Answering paragraph 1 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

2. Answering paragraph 2 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

3. Answering paragraph 3 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

4. Answering paragraph 4 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

5. Answering paragraph 5 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

6. Answering paragraph 6 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

PARTIES

7. Answering paragraph 7 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations therein and thus denies them.

8. Answering paragraph 8 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations therein and thus denies them.

9. Answering paragraph 9 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations therein and thus denies them.

10. Answering paragraph 10 of the Complaint, the answering defendants admit that Sis-Joyce International Co. Ltd. (herein after as "Sis-Joyce") is a California corporation and it is owned, in whole or in part by Lin. The answering defendants deny the remaining allegations contained in the paragraph.

11. Answering paragraph 11 of the Complaint, the answering defendants admit the allegations contained therein.

12. Answering paragraph 12 of the Complaint, the answering defendants lacks sufficient information to form a belief as to the truth or falsity of the allegations therein and thus denies them.

13. Answering paragraph 13 of the Complaint, the answering defendants lacks sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

JURISDICTION AND VENUE

14. Answering paragraph 14 of the Complaint, the answering defendants admit that Plaintiffs purport to invoke jurisdiction under the Lanham Trademark Act and under the related applicable federal and state laws, but denies that Plaintiffs have stated any valid claims against the answering defendants upon which relief can be granted.

15. Answering paragraph 15 of the Complaint, believes that the proper venue lies in the US District Court for Northern District of California.

FACTUAL ALLEGATIONS

16. Answering paragraph 16 of the Complaint, the answering defendants admit that, according to the United States Patent and Trademark Office ("USPTO") records, WanZhu Li is listed as the owner of US Trademark with a Registration No. 3332867. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

17. Answering paragraph 17 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

18. Answering paragraph 18 of the Complaint, the answering defendants admit that, according to the United States Patent and Trademark Office ("USPTO") records, WanZhu Li is listed as the owner of US Trademark with a Registration No. 3332867 and the owner of the US Trademark Application with a Serial No. 85602399. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

19. Answering paragraph 19 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

20. Answering paragraph 20 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

DEFENDANTS' COUNTERFEITING

21. Answering paragraph 21 of the Complaint, the answering defendants deny the allegations in this paragraph.

22. Answering paragraph 22 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

23. Answering paragraph 23 of the Complaint, the answering defendants deny the allegations against Lin. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

24. Answering paragraph 24 of the Complaint, the answering defendants deny the allegations against Lin. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

DEFENDANTS' FRAUDULENT WEBSITES

25. Answering paragraph 25 of the Complaint, the answering defendants deny the allegations against Lin. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

26. Answering paragraph 26 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

27. Answering paragraph 27 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

28. Answering paragraph 28 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

29. Answering paragraph 29 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

30. Answering paragraph 30 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

31. Answering paragraph 31 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

32. Answering paragraph 32 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

DEFENDANTS' FRAUDULENT ADVERTISEMENTS

33. Answering paragraph 33 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

34. Answering paragraph 34 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

DEFENDANTS' INFRINGING TRADE DRESS

35. Answering paragraph 35 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

36. Answering paragraph 36 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

DEFENDANTS' INFRINGING MARK

37. Answering paragraph 37 of the Complaint, the answering defendants admit that Lin is the owner of the US Trademark with a Registration No. 4002069, but denies the remaining allegations in this paragraph.

38. Answering paragraph 38 of the Complaint, the answering defendants deny the allegations against Lin and Sis-Joyce. The answering defendants lack sufficient information to form a belief as to the truth or falsity of the remaining allegations contained therein and thus denies them.

DEFENDANTS' INTERFERENCE WITH RENA'S BUSINESS RELATIONSHIPS

39. Answering paragraph 39 of the Complaint, the answering defendants lack sufficient information to form a belief as to the truth or falsity of the allegations contained therein and thus denies them.

FIRST CLAIM FOR RELIEF

(Statutory Trademark Infringement by Rena and Kathryn Li against all Defendants under 15 U.S.C. § 1114)

40. Answering paragraph 40 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 39 above, inclusive as if fully set forth herein.

41. The answering defendants deny the allegations of paragraph 41.

42. The answering defendants deny the allegations of paragraph 42.

43. The answering defendants deny the allegations of paragraph 43.

44. The answering defendants deny the allegations of paragraph 44.

45. The answering defendants deny the allegations of paragraph 45.

46. The answering defendants deny the allegations of paragraph 46.

47. The answering defendants deny the allegations of paragraph 47.

48. The answering defendants deny the allegations of paragraph 48.

49. The answering defendants deny the allegations of paragraph 49.

50. The answering defendants deny the allegations of paragraph 50 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

SECOND CLAIM FOR RELIEF

(Common Law Trademark Infringement by Rena and Kathryn Li against all Defendants)

51. Answering paragraph 51 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 50 above, inclusive as if fully set forth herein.

52. The answering defendants deny the allegations of paragraph 52.

53. The answering defendants deny the allegations of paragraph 53.

54. The answering defendants deny the allegations of paragraph 54.

55. The answering defendants deny the allegations of paragraph 55.

56. The answering defendants deny the allegations of paragraph 56.

57. The answering defendants deny the allegations of paragraph 57.

58. The answering defendants deny the allegations of paragraph 58 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

THIRD CLAIM FOR RELIEF

(Trademark Cancellation by Rena and Kathryn Li against Lin under 15 U.S.C. § 1064)

59. Answering paragraph 59 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 58 above, inclusive as if fully set forth herein.

60. The answering defendants deny the allegations of paragraph 60.

61. The answering defendants deny the allegations of paragraph 61.

62. The answering defendants deny the allegations of paragraph 62.

63. The answering defendants deny the allegations of paragraph 63 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

FOURTH CLAIM FOR RELIEF

(Lanham Act Section 43(a) violation by Rena and Kathryn Li against all Defendants under 15 U.S.C. § 1125(a))

64. Answering paragraph 64 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 63 above, inclusive as if fully set forth herein.

65. The answering defendants deny the allegations of paragraph 65.

66. The answering defendants deny the allegations of paragraph 66.

67. The answering defendants deny the allegations of paragraph 67.

68. The answering defendants deny the allegations of paragraph 68.

69. The answering defendants deny the allegations of paragraph 69.

70. The answering defendants deny the allegations of paragraph 70.

71. The answering defendants deny the allegations of paragraph 71.

72. The answering defendants deny the allegations of paragraph 72 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

FIFTH CLAIM FOR RELIEF

(Copyright Infringement by Rena and Kathryn Li against all Defendants)

73. Answering paragraph 73 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 72 above, inclusive as if fully set forth herein.

74. The answering defendants deny the allegations of paragraph 74.

75. The answering defendants deny the allegations of paragraph 75.

76. The answering defendants deny the allegations of paragraph 76.

77. The answering defendants deny the allegations of paragraph 77.

78. The answering defendants deny the allegations of paragraph 78.

79. The answering defendants deny the allegations of paragraph 79 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

SIXTH CLAIM FOR RELIEF

(Anticybersquatting Consumer Protection Act Violation by Rena and Kathryn Li against all Defendants under 15 U.S.C. § 1125(d))

80. Answering paragraph 80 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 79 above, inclusive as if fully set forth herein.

81. The answering defendants deny the allegations of paragraph 81.

82. The answering defendants deny the allegations of paragraph 82.

83. The answering defendants deny the allegations of paragraph 83.

84. The answering defendants deny the allegations of paragraph 84.

85. The answering defendants deny the allegations of paragraph 85.

86. The answering defendants deny the allegations of paragraph 86 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

SEVENTH CLAIM FOR RELIEF

(Trade Secret Misappropriation by Rena and Kathryn Li against all Defendants)

87. Answering paragraph 87 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 86 above, inclusive as if fully set forth herein.

88. The answering defendants deny the allegations of paragraph 88.

89. The answering defendants deny the allegations of paragraph 89.

90. The answering defendants deny the allegations of paragraph 90.

91. The answering defendants deny the allegations of paragraph 91 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

EIGHTH CLAIM FOR RELIEF

(Interference with Prospective Economic Advantage by Rena and Kathryn Li against all Defendants)

92. Answering paragraph 92 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 91 above, inclusive as if fully set forth herein.

93. The answering defendants deny the allegations of paragraph 93.

94. The answering defendants deny the allegations of paragraph 94.

95. The answering defendants deny the allegations of paragraph 95.

96. The answering defendants deny the allegations of paragraph 96.

97. The answering defendants deny the allegations of paragraph 97.

98. The answering defendants deny the allegations of paragraph 98 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

NINTH CLAIM FOR RELIEF

(Trade Libel by Rena and Kathryn Li against all Defendants)

99. Answering paragraph 99 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 98 above, inclusive as if fully set forth herein.

100. The answering defendants deny the allegations of paragraph 100.

101. The answering defendants deny the allegations of paragraph 101.

102. The answering defendants deny the allegations of paragraph 102.

103. The answering defendants deny the allegations of paragraph 100.

104. The answering defendants deny the allegations of paragraph 100 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

TENTH CLAIM FOR RELIEF

(False Light Invasion of Privacy by Rena and Kathryn Li against all Defendants)

105. Answering paragraph 105 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 104 above, inclusive as if fully set forth herein.

106. The answering defendants deny the allegations of paragraph 106.

107. The answering defendants deny the allegations of paragraph 107.

108. The answering defendants deny the allegations of paragraph 108.

109. The answering defendants deny the allegations of paragraph 109.

110. The answering defendants deny the allegations of paragraph 110 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

ELEVENTH CLAIM FOR RELIEF

(Violation of Right of Publicity by Rena and Kathryn Li against all Defendants)

111. Answering paragraph 111 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 110 above, inclusive as if fully set forth herein.

112. The answering defendants deny the allegations of paragraph 112.

113. The answering defendants deny the allegations of paragraph 113.

114. The answering defendants deny the allegations of paragraph 114.

115. The answering defendants deny the allegations of paragraph 115.

116. The answering defendants deny the allegations of paragraph 116.

117. The answering defendants deny the allegations of paragraph 117.

118. The answering defendants deny the allegations of paragraph 118 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

TWELFTH CLAIM FOR RELIEF

(California Statutory Unfair Competition by Rena and Kathryn Li against all Defendants)

119. Answering paragraph 119 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 118 above, inclusive as if fully set forth herein.

120. The answering defendants deny the allegations of paragraph 120.

121. The answering defendants deny the allegations of paragraph 121.

122. The answering defendants deny the allegations of paragraph 122.

123. The answering defendants deny the allegations of paragraph 123.

124. The answering defendants deny the allegations of paragraph 124.

125. The answering defendants deny the allegations of paragraph 125 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

THIRTEENTH CLAIM FOR RELIEF

(California Common Law Unfair Competition by Rena against all Defendants)

126. Answering paragraph 126 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 125 above, inclusive as if fully set forth herein.

127. The answering defendants deny the allegations of paragraph 127.

128. The answering defendants deny the allegations of paragraph 128.

129. The answering defendants deny the allegations of paragraph 129 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

FOURTEENTH CLAIM FOR RELIEF

(Violation of the Racketeer Influenced and Corrupt Organizations Act by Rena against all Defendants under 18 U.S.C. §§ 1962(c) and 1964(c))

130. Answering paragraph 130 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 129 above, inclusive as if fully set forth herein.

131. The answering defendants deny the allegations of paragraph 131.

132. The answering defendants deny the allegations of paragraph 132.

133. The answering defendants deny the allegations of paragraph 133.

134. The answering defendants deny the allegations of paragraph 134 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

FIFTEENTH CLAIM FOR RELIEF

(Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act by Rena against all Defendants under 18 U.S.C. §§ 1962(c) and 1964(c))

135. Answering paragraph 135 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 134 above, inclusive as if fully set forth herein.

136. The answering defendants deny the allegations of paragraph 136.

137. The answering defendants deny the allegations of paragraph 137.

138. The answering defendants deny the allegations of paragraph 138 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

SIXTEENTH CLAIM FOR RELIEF

(Unjust Enrichment by Rena against all Defendants)

139. Answering paragraph 139 of the Complaint, the answering defendants incorporates by reference the responses in paragraphs 1 through 138 above, inclusive as if fully set forth herein.

140. The answering defendants deny the allegations of paragraph 140 and specifically deny that Plaintiffs are entitled to any relief whatsoever.

PRAYER FOR RELIEF

The answering defendants deny any allegations contained in the "WHEREFORE" clause and denies that Plaintiffs are entitled to any relief whatsoever.

II. AFFIRMATIVE DEFENSES

The answering defendants, as affirmative defenses to each and every claim asserted in Plaintiffs' Complaint, allege as follows, without admission that the answering defendants carry the burden of proof on any of the defenses set forth below. In support each of the following defenses, the facts alleged in the Counterclaims (See "III. COUNTERCLAIMS" below) are incorporated by reference herein.

1st AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint fails to state facts against the answering defendants upon which relief can be granted.

2nd AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs' alleged claims are barred, in whole or in part, by the doctrine of laches, owing to an unreasonably delay in bringing the action and the answering defendants' prejudice as a result of that delay.

3rd AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs' alleged claims are barred, in whole or in part, as a result of its own acts and omissions; Plaintiffs are stopped from obtaining the relief sought in the Complaint.

4th AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs' alleged claims are barred, in whole or in part, because as a result of its acts and omissions, Plaintiffs have waived any right to recover the relief sought in the Complaint.

5th AFFIRMATIVE DEFENSE

(Acquiescence)

Plaintiffs' alleged claims are barred, in whole or in part, by application of the doctrine of acquiescence, in that Plaintiffs have consented to those purported acts of which it now complains.

6th AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs' alleged claims are barred, in whole or in part, under the equitable doctrine of unclean hands as a result of Plaintiffs' unclean hands and for reasons of public policy.

7th AFFIRMATIVE DEFENSE

(Lack of Standing/Ripeness)

Plaintiffs' alleged claims are barred, in whole or in part, by Plaintiffs' lack of standing, or because such claims are not ripe for adjudication.

8th AFFIRMATIVE DEFENSE

(Mootness)

Plaintiffs' alleged claims are barred, in whole or in part, since these are moot.

9th AFFIRMATIVE DEFENSE

(Remote, Speculative, and Contingent Damages)

Plaintiffs' alleged claims may not be recovered as they are remote, speculative, and contingent.

10th AFFIRMATIVE DEFENSE

(Fair Use)

Plaintiffs' alleged claims are barred, in whole or in part, by the trademark fair use doctrine.

11th AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs have failed to mitigate its alleged damages, costs and/or attorneys' fees.

12th AFFIRMATIVE DEFENSE

(Lack of Secondary Meaning or of Fame)

Plaintiffs' alleged claims are barred, in whole or in part, because Plaintiffs have not acquired secondary meaning in its alleged trademarks and also because the alleged trademarks asserted in the Complaint are not famous.

13th AFFIRMATIVE DEFENSE

(No Likelihood of Confusion)

Plaintiffs' alleged claims are barred, in whole or in part, because there is no likelihood of confusion.

14th AFFIRMATIVE DEFENSE

(Unlawful Use of Asserted Trademark)

Plaintiffs' alleged claims are barred in their entirety because of Plaintiffs' unlawful use, the nexus between Plaintiffs' unlawful use and Plaintiffs' purported trademarks, and Plaintiffs' failure to make lawful use during any pertinent time of the purported trademarks asserted in the Complaint.

15th AFFIRMATIVE DEFENSE

(Other Parties Responsible)

If anyone is legally responsible for any and all of the alleged acts, or the harm or damage allegedly suffered by Plaintiffs, it is someone other than the answering defendants, and the liability of the answering defendants, if any, should be reduced proportionally.

16th AFFIRMATIVE DEFENSE

(Plaintiffs lack of copyright registration)

Plaintiffs' alleged copyright claims are barred in their entirety because Plaintiff failed to register the alleged materials with US Copyright Office.

17th AFFIRMATIVE DEFENSE

(Invalid Trademark and Registration)

Plaintiffs' alleged claims are barred in their entirety because Plaintiff the alleged trademarks and registrations asserted by Plaintiffs are invalid and, with respect to the registrations, are subject to cancellation.

18th AFFIRMATIVE DEFENSE

(Functionality)

Plaintiffs' alleged claims are barred in their entirety because of the functionality doctrine.

19th AFFIRMATIVE DEFENSE

(Negligence of Others)

Plaintiffs' alleged claims are barred, in whole or in part, by the negligence of third parties. Therefore, Plaintiffs' recovery, if any, should be reduced on the basis of the comparative fault of these third parties.

20th AFFIRMATIVE DEFENSE

(Freedom of Speech)

Plaintiffs' alleged claims are barred, in whole or in part, by the freedom of speech protected by the First Amendment of the United States Constitution.

21st AFFIRMATIVE DEFENSE

(Asserted Marks are Generic)

Plaintiffs' alleged claims are barred, in whole or in part, on the ground that alleged trademarks asserted by Plaintiffs are generic.

22nd AFFIRMATIVE DEFENSE

(Terms are Nondistinctive and Lack Secondary Meaning)

Plaintiffs' alleged claims are barred, in whole or in part, on the ground that alleged trademarks asserted by Plaintiffs are nondistinctive and lack secondary meaning.

23rd AFFIRMATIVE DEFENSE

(Prior Registration and Use)

Plaintiffs' alleged claims are barred in their entirety because of the existence of prior registrations and use establishing that Plaintiff could not, as a matter of law, be harmed by the answering defendants' use of the asserted trademarks.

24th AFFIRMATIVE DEFENSE

(Non-Willful Conduct)

Any and all acts alleged to have been committed by the answering defendants were performed with lack of knowledge and lack of willful intent.

25th AFFIRMATIVE DEFENSE

(Justification and Privilege)

The answering defendants' actions respecting the subject matters alleged in the claims, and each of them, were undertaken in good faith with the absence of malicious intent to injure Plaintiffs and constitute lawful, proper, and justified means to further its purpose of engaging in and continuing its business. By reason thereof, Plaintiffs are barred, in whole or in part, from recovery on the alleged claims in the Complaint.

26th AFFIRMATIVE DEFENSE

(Lack of Capacity to Sue)

Plaintiffs' alleged claims are barred, in whole or in part, by Plaintiffs' lack of capacity to sue.

27th AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

To the extent Plaintiffs seeks punitive damages, this violates the rights of the answering defendants under the United States and California Constitutions in that:

- Punitive damages violate the answering defendants' right to procedural due process under the Fourteenth Amendment of the United States Constitution;
- Punitive damages violate the answering defendants' right to protection from "excessive fines," as provided by the Eighth Amendment to the United States Constitution and Article I, Section 17 of the California Constitution, and further violate the answering defendants' right to substantive due process as provided by the Fifth and Fourteenth Amendments to the United States Constitution; and
- The imposition of punitive damages upon proof under a standard less than "beyond a reasonable doubt" violates the answering defendants' rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution;

28th AFFIRMATIVE DEFENSE

(One Who Seeks Equity Must Do Equity)

Plaintiffs' alleged claims are barred or diminished, in whole or in part, to the extent Plaintiffs must undertake equitable acts in order to seek equity.

29th AFFIRMATIVE DEFENSE

(Punitive Damages Unawardable)

To the extent Plaintiffs seek punitive damages, they are barred by the provisions of California Civil Code §3294 since the answering defendants did not commit the alleged acts with oppression, fraud or malice.

30th AFFIRMATIVE DEFENSE

(Preemption)

Plaintiffs' state law claims are preempted in whole or in part by federal law.

31st AFFIRMATIVE DEFENSE

(Lack of Required License)

Plaintiffs' alleged claims are barred, in whole or in part, owing to Plaintiffs' failure to obtain and maintain a valid license, registration and permit prior to engaging in those activities underlying its Complaint.

32nd AFFIRMATIVE DEFENSE

(Abandonment through Naked License)

Plaintiffs' alleged claims are barred in their entirety as Plaintiffs have abandoned any and all rights, if any, in the alleged trademarks, through naked licensing.

33rd AFFIRMATIVE DEFENSE

(Abandonment through Assignment in Gross)

Plaintiffs' alleged claims are barred in their entirety as Plaintiffs have abandoned any and all rights, if any, in the alleged trademark, through an assignment in gross of the mark.

34th AFFIRMATIVE DEFENSE

(Proximate Cause)

Plaintiffs' alleged claims are barred, in whole or in part, because the answering defendants did not proximately cause any of the violations, losses, damages, injuries, or harms alleged in the Complaint.

35th AFFIRMATIVE DEFENSE

(Fraud)

Plaintiffs' alleged claims are barred, in whole or in part, because Plaintiff's alleged claims are based on or arise from fraudulent deceptive trade practice.

36th AFFIRMATIVE DEFENSE

(Illegality)

Plaintiffs' alleged claims are barred, in whole or in part, because Plaintiff's alleged claims are based on or arise from illegal activities which violate 18 USC §1341, 18 USC §1343, 18 USC §1956-1957, 18 USC §1962, 26 USC §7201-7207, 31 USC §5314-5315, and California Penal Code §327.

37th AFFIRMATIVE DEFENSE

(Reservation)

The answering defendants reserves the right to rely on all further affirmative defenses that become available or appear during or following discovery proceedings in this action, and the answering defendants reserves the right to rely on any and all such further affirmative defenses.

III. COUNTERCLAIMS

Lin and Sis-Joyce, for their counterclaims against American Rena International Corporation (hereinafter as "Rena"), WanZhu "Kathryn" Li (hereinafter as "Li") and Robert M. Milliken (hereinafter as "Milliken"), collectively referred to as Counter-defendants, hereby allege as follows:

PARTIES

1. Rena is, and at all times mentioned herein was, a corporation residing and doing business in the State of California.

2. Li is, and at all times mentioned herein was, residing and doing business in the State of California.

3. Milliken is, and at all times mentioned herein was, residing and doing business in the State of California.

4. Sis-Joyce is, and at all times mentioned herein was, residing and doing business in the State of California.

5. Lin is, and at all times mentioned herein was, residing and doing business in the State of California.

6. On August 13, 2012, Li, Milliken and Rena filed their complaint against Sis-Joyce, Lin, et al, in the United States District Court, Central District of California.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over Lin and Sis-Joyce's counterclaims pursuant to 15 U.S.C. §1119, §1125 and 28 U.S.C. §1331, §1338(a) and §2201.

8. Personal jurisdiction over Plaintiffs is proper because Plaintiffs are and were residing doing business in the State of California.

9. Although the best venue lies in the US District Court for the District of Northern California, venue would be alternatively proper in this judicial district.

ALLEGATIONS

10. Before Sis-Joyce was incorporated, Lin was doing business as sole proprietor, selling various products including body and beauty care cosmetics. Lin's manufacturing company in Taiwan and Mainland China started using the mark ARëna in 1999. After Sis-Joyce was incorporated on October 21 of 2010, it was authorized by Lin to use the mark ARëna for body and beauty care cosmetics exclusively.

11. Lin filed an application for registering the mark ARëna under International Class (IC) 003 with US Patent and Trademark Office (USPTO) on December 9, 2010 and the application for registration was approved on July 26, 2011 with a Registration No. 4002069. As shown in EXHIBIT A, the print-out of the USPTO registration information for the mark, the mark is used

to the Goods and Services of "body and beauty care cosmetics". The color(s) purple is/are claimed as a feature of the mark. The mark consists of the words "NEW!", "ARËNA" and "ACTIVATION ENERGY SERUM" in purple stylized font and a purple oval surrounding the word "NEW!". However, "NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NEW!" AND "ACTIVATION ENERGY SERUM" APART FROM THE MARK AS SHOWN."

12. Li filed an application for registering a standard character mark RENA BIOTECHNOLOGY under IC 005 with USPTO on September 5, 2006 and the application for registration was approved on November 6, 2007 with a Registration No. 3332867. As shown in EXHIBIT B, the print-out of the USPTO registration information for the mark, the mark is used to the Goods and Services of "dietary and nutritional supplements, etc." No claim is made to the exclusive right to use "biotechnology" apart from the mark as shown.

13. As owner of the federally registered trademark ARëna Activation Energy Serum, Lin authorized Sis-Joyce the exclusive right to use the mark on its products. Rena's use of the mark RENA BIOTECHNOLOGY (Registration No. 3332867) on directly competing body and beauty care cosmetics products is likely to cause confusion, cause mistake, or deceive consumers as to the affiliation, connection or association of Rena and its products with those of Sis-Joyce, and is likely to cause confusion, cause mistake or deceive consumers as to the origin, sponsorship or approval by Sis-Joyce of Rena's products. Rena' use of the RENA BIOTECHNOLOGY trademark (Registration No. 3332867) along with products such as Activation Energy Serum has infringed and is infringing Lin's ARëna Activation Energy Serum trademark.

14. On information and belief, Counter-defendants closed their business operations in the United States for almost two years from approximately September 29, 2010 to July 12, 2012.

During that period, Li's RENA BIOTECHNOLOGY trademark (Registration No. 3332867) was not in use in commerce.

15. On information and belief, Counter-defendants have made a deliberate attempt in eliminating one of its competitors, Sis-Joyce, through a calculated, false and malicious attempt in harming Sis-Joyce's integrity, business and reputation. On September 8, 2012, Counter-defendants published a whole page article in the World Journal Chinese Newspaper maliciously accusing Sis-Joyce and its product, ARëna Activation Energy Serum, of counterfeit, infringement, fraud and other wrong-doings.

16. On information and belief, On September 9, 2012 and September 11, 2012, Rena released further public announcements on their website in furthering their deliberate attempt in harming Sis-Joyce and Lin's integrity, business and reputation. By announcing to the public that Sis-Joyce and Lin have operated their business on an alleged fraudulent basis, Counter-defendants have caused harm to the Counter-claimants.

17. On information and belief, Counter-defendants have made it recklessly known to consumers and the public that Sis-Joyce and its products are based on counterfeit, infringement, fraud and other wrongdoings. Through the newspaper advertisement and Rena's website announcements, Counter-defendants have made false, malicious, libelous, defamatory statements against Sis-Joyce and Lin in a public domain. Counter-defendants' actions have deliberately caused Counter-claimants harm.

18. On information and belief, Counter-defendants' business is operated based on a fraudulent and illegal pyramid scheme. They set-up and operate an endless chain scheme. They recruit agents to distribute their fraudulent products to the underground channels in Mainland China. To be recruited, a participant has to pay a valuable consideration for the chance to receive

compensation for introducing one or more additional persons into participation in the scheme. Counter-defendants' products are not available in the market place. Only recruited agent or participant, who has a unique user name and password, can access to his or her account associated with Counter-defendants' system via their website and make purchase order.

19. Rena continuously makes fraudulent advertisements. For example, Rena announced that its products were developed by its seventy-five (75) doctors and scientists. In fact, the products was developed by and purchased from an independent supplier in Mainland China and was packed in the United States.

20. Rena claims that its products are approved by the United States of America Food and Drug Administration (FDA) on the products itself. In fact, Rena's products are not FDA approved and Counter-defendants have made a deliberate attempt to deceive and defraud the public and the consumers.

21. Rena further claims to the public consumers that its products are patented, which is flatly false. Counter-defendants have made a deliberate attempt to deceive and defraud the public and consumers.

22. Rena has made public claims that its products will aid "in the treatment of all kinds of cancers, AIDS, heart disease, diabetes…" Counter-defendants have made a deliberate attempt to deceive and defraud the public and consumers.

23. Rena claims that its products are endorsed by celebrities like Arnold Schwarzenegger, when in fact, he did not. Instead, Counter-defendants have a continued pattern of making deceitful, false and fraudulent statements to the public and consumers.

24. On information and belief, Counter-defendants' have engaged in deliberate, fraudulent and illegal business practices in providing a Green Card "prize" in obtaining United

States Permanent Residency for the customer and their family after a customer/member achieves certain sales and recruitment goals. Counter-defendants further provide instructions to its "Green Card prize winners" to obtain welfare, housing and other government subsidies at taxpayers' expenses. Counter-defendants' deliberate actions have violated Federal laws.

25. On information and belief, Counter-defendants have committed financial crimes, willful concealment, money laundering, underreporting and non-reporting of sales and revenues. In Counter-defendants' Complaint, they claimed that they have nearly 100,000 sales agents worldwide (*p. 26,* ¶5). In the actual practice of a multi-level marketing pyramid scheme, a member is, in fact, a count of a completed sale and is defined as one who has purchased and paid for one (1) order valued at between $1,900 to $5,900. Each completed sale, or order, is assigned a sequential "member" identification number. The equivalence of 100,000 "sales" equals to the completed sale of nearly 100,000 orders valued at between $190 million to $590 million in revenue.

26. On information and belief, Plaintiffs' Complaint claims that its revenue is up to $30 million for 2010 and $2.5 million per month for parts of 2011. There is a huge discrepancy in the difference between the 100,000 completed sales that agents have generated of hundreds of millions of dollars to the tens of millions of dollars in sales that is claimed in the Counter-defendants' Complaint. Instead, the Counter-defendants have deleted, en masse, records of completed sales in their database. The results of deleting sales transactions equals to hundreds of millions of dollars of unreported revenue in order to evade domestic and foreign government taxes and duties.

27. On information and belief, Counter-defendants have deliberately concealed sales revenues of U.S. shipments to a company in China to willfully and illegally avoid state and

federal taxes. In the process of this conduct, Counter-defendants have provided misrepresentations and false information to several domestic and foreign tax and customs agencies.

28. On information and belief, Counter-defendants have deliberately provided false information to the People's Republic of China's General Administration of Customs and the State Administration of Taxation. Li in particular, is currently a fugitive from justice in China. Counter-defendants Li and Rena are currently under investigation for criminal activities by the People's Republic of China's General Administration of Customs and the State Administration of Taxation.

29. On information and belief, Counter-defendants have willfully and illegally concealed and laundered money to a Chinese company called SH (Shanghai) Jingyun Info Ltd. For instance, when American agents purchase products from Rena, payments are made directly to SH Jingyun Info Ltd. In China, where agents are forced to pay currency exchange fees.

COUNTERCLAIM 1

FEDERAL TRADEMARK INFRINGEMENT

By Counter-claimants against Rena and Li

30. Counter-claimants incorporate and re-allege paragraphs 1-29 of the Counterclaims.

31. Counter-claimants have exclusive rights to the federally registered ARëna Activation Energy Serum trademark (Registration No. 4002069) on IC 003 products, i.e., "body and beauty care cosmetics".

32. Although the "RENA BIOTECHNOLOGY" mark (Registration No. 3332867) was registered for IC 005 products, Counter-defendants used the "RENA BIOTECHNOLOGY" mark (Registration No. 3332867) on IC 003 products, i.e., "body and beauty care cosmetics".

33. Counter-defendants knew that Counter-claimants were using the ARëna Activation Energy Serum mark (Registration No. 4002069) on on IC 003 products, i.e., "body and beauty care cosmetics".

34. Due to the similarity between RENA and ARëna, Counter-defendants' use of "RENA BIOTECHNOLOGY" (Registration No. 3332867) on IC 003 products, i.e., "body and beauty care cosmetics" has caused confusion and thus infringed and is infringing Counter-claimants' trademark rights in the ARëna Activation Energy Serum mark (Registration No. 4002069).

35. Counter-defendants' intentional and willful infringement has caused significant harms to Counter-claimants.

36. As a direct of Counter-defendants' actions, Counter-claimants demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate.

COUNTERCLAIM 2

COMMON LAW TRADEMARK INFRINGEMENT

By Counter-claimants against Rena and Li

37. Counter-claimants incorporate and re-allege paragraphs 1-36 of the Counterclaims.

38. Counter-claimant Lin had used ARëna as a word mark before American Rena International Corp. was established.

39. Within the market of body and beauty care cosmetics, Lin's use of ARëna has gained substantial goodwill and secondary meaning.

40. Due to the similarity between the words RENA and ARëna, Counter-defendants' use of "RENA BIOTECHNOLOGY" (Registration No. 3332867) on IC 003 products, i.e., "body

and beauty care cosmetics" has infringed Counter-claimants' common law rights in the word mark of ARëna.

41. As a direct of Counter-defendants' actions, Counter-claimants demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate.

COUNTCLAIM 3

DECLARATORY JUDGMENT OF NON-INFRINGEMENT

By Counter-claimants against Rena and Li

42. Counter-claimants incorporate and re-allege paragraphs 1-41 of the Counterclaims.

43. An actual and justiciable controversy has arisen and now exists between Counter-claimants, on the one hand, and Counter-defendants Li and Rena, on the other hand, concerning their respective rights and duties with respect to (i) Lin's trademark (Registration No. 3332867), and (ii) Li's trademark (Registration No. 4002069).

44. A judicial determination is necessary and appropriate at this time under the circumstances in order that Counter-claimants may ascertain their rights and duties with respect to the word RENA and ARëna.

45. Counter-defendants cannot preclude Counter-claimants from using ARëna on IC 003 products.

46. Because Counter-defendants' mark RENA BIOTECHNOLOGY (Registration No. 3332867) is for IC 005 products, i.e. "dietary and nutritional supplements, etc.", Counter-claimants' mark ARëna (Registration No. 4002069) is for IC 003 products, i.e., "body and beauty care cosmetics," Counter-claimants' use of their mark on IC products does not infringe Counter-defendants' mark at all.

47. Counter-claimants have not and do not infringe any valid trademark rights that Li and Rena may have in the word RENA. Sis-Joyce's use of the word ARëna is not likely to cause confusion, to cause mistake, or to deceive the consuming public as to source of origina, source, or affiliation.

48. Pursuant to 15 U.S.C. §1117(a), Counter-claimants are entitled to an award of its attorneys' fees incurred in litigating this declaratory judgment claim because PLainitffs' infringement claims are groundless and contrary to settled law, thereby establishing that this is an exceptional case for purpose of awarding attorneys' fees.

COUNTERCLAIM 4

TRADE LIBEL

By Sis-Joyce against all Counter-defendants

49. Counter-claimants incorporate and re-allege paragraphs 1-48 of the Counterclaims.

50. Counter-defendants have made public statements through a whole page newspaper article and Rena's website articles regarding Counter-claimants. The articles include many derogatory statements that affect the marketability of Sis-Joyce's goods and services.

51. Counter-defendants intended the publication of the articles to cause pecuniary loss or reasonably should recognize that the publication will result in pecuniary loss of Sis-Joyce.

52. As a direct and proximate result of Counter-defendants' derogatory statements, Sis-Joyce has suffered pecuniary loss. Sis-Joyce's loss is at least $10,000, which to be determined according to the proof at the time of trial.

53. Counter-defendants knew that such statements were false, inaccurate, misleading and deceptive and acted with reckless disregard of the truth.

54. Sis-Joyce demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate.

COUNTERCLAIM 5

CALIFORNIA STATUTORY UNFAIR COMPETITION

By Sis-Joyce against all Counter-defendants

55. Counter-claimants incorporate and re-allege paragraphs 1-54 of the Counterclaims.

56. Counter-defendants' conducts described herein constitute fraudulent and unlawful business practices as defined by California Business & Profession Code § 17200 et seq.

57. Counter-defendants have been operating an unlawful and fraudulent pyramid scheme and have engaged in an unfair and deceptive trade practice. One example of unfair and deceptive trade practice is the publication of the whole page news paper article and the articles published in Rena's website.

58. Counter-defendants' unfair and deceptive trade practice occurred in the course of their business and occupation.

59. Counter-defendants' unfair and deceptive trade practice significantly impacts the public as actual or potential consumers of the Counter-defendants' goods and services.

60. Sis-Joyce suffered injury in fact to a legally protected interest.

61. Counter-defendants' unfair and deceptive trade practice caused Sis-Joyce's injury.

62. As a direct of Counter-defendants' actions, Sis-Joyce demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate.

COUNTERCLAIM 6

COMMON LAW UNFAIR COMPETITION

By Sis-Joyce against all Counter-defendants

63. Counter-claimants incorporate and re-allege paragraphs 1-62 of the Counterclaims.

64. Sis-Joyce's products have a firm holding within the body and beauty care cosmetic market. Consumers and sales representatives have a thorough understanding and knowledge that Sis-Joyce's products are associated with and originated from Sis-Joyce.

65. Counter-defendants' recent and similar products, using a trademark registered under IC 005 products, i.e., dietary and nutritional supplements, have competed unfairly with Sis-Joyce's products and have caused damage to Sis-Joyce.

66. As a direct of Counter-defendants' actions, Sis-Joyce is entitled to an award of its actual damages according to proof at the time of trial.

COUNTERCLAIM 7

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT VIOLATION

By Sis-Joyce against all Counter-defendants

67. Counter-claimants incorporate and re-allege paragraphs 1-66 of the Counterclaims.

68. Since the inception of Rena, Counter-defendants have been operating a deceptive international endless chain scheme through a pattern of racketeering activities. They recruit agents to distribute their fraudulent products to the underground channels in China. To be recruited, a participant has to pay a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme. The payments by the participants in the United States were directly sent to SH (Shanghai) Jingyun Info Ltd., a company in Mainland China. This practice violates 18 USC §1341, 18 USC §1343, 18 USC §1956-1957, 18 USC §1962, 26 USC §7201-7207, 31 USC §5314-5315, and California Penal Code §327.

69. Sis-Joyce has been injured in its business as a direct and proximate result of Counter-defendants' practice. Sis-Joyce's loss is at least $10,000, which to be determined according to the proof at the time of trial.

70. As a direct of Counter-defendants' actions, Sis-Joyce demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate, including the relief according to 18 USC §1964.

COUNTERCLAIM 8

CONSPIRACY TO VIOLATE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

By Sis-Joyce against all Counter-defendants

71. Counter-claimants incorporate and re-allege paragraphs 1-70 of the Counterclaims.

72. Since the inception of Rena, Counter-defendants have been conspiring in setting up and operating a deceptive international endless chain scheme through a pattern of racketeering activities. They recruit agents to distribute their fraudulent products to the underground channels in China. To be recruited, a participant has to pay a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme. The payments by the participants in the United States were directly sent to SH (Shanghai) Jingyun Info Ltd., a company in Mainland China. Counter-defendants knowingly, willfully, and unlawfully conspired, combined, confederated and agreed together to violate18 USC §1341, 18 USC §1343, 18 USC §1956-1957, 18 USC §1962, 26 USC §7201-7207, 31 USC §5314-5315, and California Penal Code §327.

73. Sis-Joyce has been injured in its business as a direct and proximate result of Counter-defendants' conspiracy. Sis-Joyce's loss is at least $10,000, which to be determined according to the proof at the time of trial.

74. As a direct of Counter-defendants' actions, Sis-Joyce demands judgment against Counter-defendants in an amount deemed by this Court to be just and fair and in any other way in which the Court deems appropriate, including the relief according to 18 USC §1964.

COUNTERCLAIM 9

FRAUD

By Lin against all Counter-defendants

75. Counter-claimant Lin incorporates and re-alleges paragraphs 1-74 of the Counterclaims.

76. Counter-defendants have intentionally and willfully and with intent to defraud agents, buyers and consumers, including Lin, through made up and published sham facts.

77. Counter-defendants also intentionally and wrongfully represented *inter alia*, as follows: that Rena has existed and has been licensed in America for approximately 20 years; that Rena's Chief Executive Officer Milliken is a licensed doctor and scientist; that Rena's products cure diseases, including but not limited to cancers, AIDS and diabetes, and/or that its products help treat the symptoms of each of these maladies; that Rena has conducted ten (10) years of clinical testing of their products; that previous California Governor Arnold Schwarzenegger has used their products; that their product was developed by its 75 doctors and scientists when, in fact, the complete product was developed by and purchased from an independent supplier in mainland China; that their product is U.S. made and fraudulently hide that fact that its product is

developed and manufactured in China; that said Counter-defendants were properly licensed to carry on a multilevel marketing industry in California and the United States; and that all of its products are safe and FDA approved; that its product is patented, and the like.

78. The above described representations were material and in fact false. At the time the Counter-defendants published said misrepresentations they knew or should have known that the representations were false.

79. Counter-defendants made the false representations with the intent to defraud and induce Lin and others to rely upon them, and to act as set forth above.

80. Lin justifiably relied on upon the false representations and did not know the falsity of such misrepresentations.

81. Counter-defendants concealed material facts by not disclosing the falsity of the misrepresentations. Counter-defendants acted with scienter and intended to defraud and induce Lin and the public to act as set forth above.

82. As a direct and proximate result of Lin' justified reliance upon the misrepresentations of Counter-defendants, Counter-defendants benefitted from Lin, and Lin suffered loss of at least $1,000, according to proof at the time of trial.

83. The acts of Counter-defendants and each of them, as described above, were willful, wanton, malicious, fraudulent, oppressive and illegal and done for the purpose of injuring and damaging Lin; Lin therefore demands imposition of punitive and exemplary damages.

COUNTERCLAIM 10

DEFAMATION

By Lin against all Counter-defendants

84. Counter-claimant Lin incorporates and re-alleges paragraphs 1-83 of the Counterclaims.

85. On September 8, 2012, Counter-defendants wrongfully published in writing via newspaper publication concerning cross-Claimants to thousands of people, including hundreds of Cross-claimants' subscribers. In the article published through the World Journal Chinese Newspaper, Counter-defendants deliberately expressed, explicit and implied, false representations against Lin, such as but limited to:

A. Cross-claimants acted with criminal intent and performed criminal conduct; that Cross-claimants are criminals;

B. Cross-claimants stole from Counter-defendants;

C. Cross-claimants wrongfully distributed and sold unauthorized Rena's products;

D. Cross-claimants performed unlawful acts;

E. Cross-claimants wrongfully and deliberately attempted to engage in conduct for the purpose of undermining Lin's reputation.

86. Counter-defendants made further public announcements on their company's website on September 9, 2012 and September 11, 2012 in a deliberate attempt to cause further public defamation of Lin through deceitful and false statements.

87. Counter-defendants' public statements were made known to not only Cross-claimants' customers and other third parties, but to the masses.

88. The false representations were in writing and thus constitute libel.

89. Counter-defendants' statements imputed criminal conduct to Lin and negative qualities and injured Lin's reputation.

90. Counter-claimants also suffered direct loss of at least $10,000, emotional distress and humiliation as well as embarrassment and other financial injury, also as a direct and proximate result of the libelous publications.

COUNTERCLAIM 11

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

By Lin against all Counter-defendants

91. Counter-Claimant Lin incorporates and re-alleges paragraphs 1-90 of the Counterclaims.

92. The above described conduct of Counter-defendants was extreme and outrageous and proximately caused Lin injury including extreme emotional distress as above described and as hereinafter set forth.

93. Counter-defendants' acts were perpetrated with a deliberate and premeditated malicious, oppressive and fraudulent intent intended to cause Lin severe emotional distress, humiliation, embarrassment and financial injury.

94. Counter-defendants intended to harm and injury Lin and intended to and did cause her extreme distress.

95. Counter-claimants were accused through three public publications on September 8, 2012, September 9, 2012 and September 11, 2012 that was wrongfully published by Counter-defendants to thousands of people, including hundreds of Counter-claimants' customers, of the above referenced false representations regarding Lin.

96. Counter-defendants' actions have thereby proximately caused Lin to suffer extreme embarrassment, humiliation and severe emotional damage and distress that has impacted her ability to function gainfully and caused financial hardship.

97. As a direct and proximate result of the wrongful publications of Counter-defendants, Lin has suffered severe financial hardship, emotional distress and embarrassment.

98. Counter-defendants are liable for general and special damages caused to and incurred by Lin for intentional infliction of emotional distress to her for injuries proximately caused to her according to proof at the time of trial. Lin is also entitled to punitive and exemplary damages according to proof.

COUNTERCLAIM 12

TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL ADVANTAGE

By Counter-claimants against all Counter-defendants

99. Counter-claimants incorporate and re-allege paragraphs 1-98 of the Counterclaims.

100. Through Counter-defendants' deliberate attempt to eliminate Counter-claimants as one of its competitors, Counter-defendants made calculated and false publications to harm Counter-claimants.

101. Counter-defendants' interference with Cross-claimants by intentionally and wrongfully inducing Cross-claimants customers and potential clientele to cease further business with Counter-claimants. The interference is the proximate cause of Cross-claimants' direct loss of at least $10,000 and other financial losses that interrupted and terminated Cross-claimants' contractual relationships with its established customers to potential clientele, thereby damaging Cross-claimants according to proof at the time of the trial.

102. Counter-defendants published deliberate misrepresentations as to Cross-claimants' character, integrity, honesty and performance that were perpetrated for the premeditated and precise purpose of interrupting and severing Cross-claimants' contractual relationships with its established customers, inducing them to breach their contractual promises to Cross-claimants.

103. The conduct by Counter-defendants has caused Cross-claimants severe emotional distress and irreparable harm to their reputation in addition to financial, monetary and pecuniary damages.

PRAYER FOR RELIEF

WHEREFORE, Counter-claimants hereby pray this Court for the following relief:

1. For dismissal of Plaintiffs' action with prejudice;
2. For an order that Plaintiffs shall take no relief from their Complaint herein;
3. For an award of compensatory damages according to proof;
4. For an award of punitive damages to deter similar wrong doings;
5. For an award of prejudgment interest at a reasonable rate as allowed by the laws;
6. For an award of Counter-claimants' costs and attorneys' fees herein incurred; and
7. For such further and other relief as the Court deems fair and just.

Dated: November 29, 2012

JEW & ASSOCIATES

By: _____
LEON E. JEW
Attorneys for Defendants Alice Lin and Sis-Joyce

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Fri Nov 30 05:02:46 EST 2012

Record 1 out of 1

NEW!
ARëna
Activation Energy Serum

Word Mark	NEW! ARËNA ACTIVATION ENERGY SERUM
Translations	The word "ARËNA" has no meaning in a foreign language.
Goods and Services	IC 003. US 001 004 006 050 051 052. G & S: Body and beauty care cosmetics. FIRST USE: 20100601. FIRST USE IN COMMERCE: 20100601
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	26.03.02 - Ovals, plain single line; Plain single line ovals
Serial Number	85194674
Filing Date	December 9, 2010
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 10, 2011
Registration Number	**4002069**
Registration Date	July 26, 2011
Owner	(REGISTRANT) Lin, Alice INDIVIDUAL UNITED STATES 675 N. 1st St., Ste. 765 San Jose CALIFORNIA 95112
Attorney of Record	Eliza X. Wang
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "NEW!" AND "ACTIVATION ENERGY SERUM" APART FROM THE MARK AS SHOWN
Description	The color(s) purple is/are claimed as a feature of the mark. The mark consists of the words "NEW!", "ARËNA" and

of Mark	"ACTIVATION ENERGY SERUM" in purple stylized font and a purple oval surrounding the word "NEW!".
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

TESS was last updated on Fri Nov 30 05:02:46 EST 2012

Record 1 out of 1

RENA BIOTECHNOLOGY

Word Mark	RENA BIOTECHNOLOGY
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Dietary and nutritional supplements; Dietary fiber as an additive for food products; Dietary food supplements; Dietary supplemental drinks; Food for diabetics; Food for infants; Food for medically restricted diets; Food supplements; Food supplements, namely, anti-oxidants; Multivitamin preparations; Nutritional additives for use in foods and dietary supplements for human consumption. FIRST USE: 20070201. FIRST USE IN COMMERCE: 20070201
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	78967416
Filing Date	September 5, 2006
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	April 24, 2007
Registration Number	**3332867**
Registration Date	November 6, 2007
Owner	(REGISTRANT) WANZHU, LI INDIVIDUAL CHINA 67 E. Live Oak Ave., Suite 105 Arcadia CALIFORNIA 91006
Attorney of Record	David T. Bracken
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BIOTECHNOLOGY" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	LIVE

EXHIBIT B, 1/2

ndicator

EXHIBIT B, 2/2